

IN THE DISTRICT COURT OF THE UNITED STATES  
FOR THE NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

IN RE:  
NATIONAL PRESCRIPTION  
OPIATE LITIGATION

Case No. 1:17-md-2804  
Cleveland, Ohio

CASE TRACK THREE

October 8, 2021  
8:48 A.M.

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**VOLUME 5**

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TRANSCRIPT OF JURY TRIAL PROCEEDINGS,  
BEFORE THE HONORABLE DAN A. POLSTER,  
UNITED STATES DISTRICT JUDGE,  
AND A JURY.

- - - - -

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Proceedings recorded by mechanical stenography;  
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18 ALSO PRESENT:

Special Master David Cohen

19  
20 - - - - -  
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22  
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1                   FRIDAY, OCTOBER 8, 2021, 8:48 A.M.

2                   THE COURT: All right. I guess the robe  
3 was a good idea to wear.

4                   All right. I guess, first, do the  
08:49:03 5 defendants have any objection -- you can be seated.  
6 Sorry.

7                   Do the defendants have any objection to  
8 recording Mr. Rannazzisi's testimony next week?

9                   MR. DELINSKY: Your Honor, Eric Delinsky  
08:49:19 10 for CVS.

11                  We do -- we do object, speaking for CVS, on  
12 the ground that there's no basis to treat Mr. Rannazzisi  
13 differently from any other witness in the case.

14                  There's many witnesses who are testifying  
08:49:33 15 multiple times at multiple trials, and --

16                  THE COURT: I'm not worried about that.

17                  It's a health issue, okay. The fact that  
18 he's testifying multiple times or the DOJ finds it an  
19 inconvenience, I'm not considering that.

08:49:51 20                  It's the health issue and I would do it if  
21 there's any other witness who may be needed in other  
22 cases and whose health is precarious.

23                  Again, I'm not deciding what I would do if  
24 something came up, but I think it's a reasonable thing,  
08:50:08 25 so anyone else have any objection?

1 MR. MAJORAS: Your Honor, John Majoras for  
2 Walmart.

3 The only thing I would add is that I don't  
4 think it would be appropriate to note to the jury  
08:50:18 5 that --

6 THE COURT: Oh, I'm not going to say  
7 anything.

8 MR. MAJORAS: I know you're not, Your  
9 Honor.

08:50:23 10 THE COURT: Okay. They're not even going  
11 to know.

12 In fact, if it was not going to be in a  
13 manner that no one would know, I wouldn't allow it.

14 MR. MAJORAS: Thank you.

08:50:32 15 THE COURT: So, okay, well, there's not  
16 going to be any mention of it at all.

17 MR. STOFFELMAYR: Judge, Kaspar  
18 Stoffelmayr.

19 I don't want to pile on but I think this is  
08:50:42 20 clear, I just want to make sure it's completely clear,  
21 that in allowing this, Your Honor wouldn't be making any  
22 determination about whether he is subject to depositions  
23 in other cases depending on his health then.

24 THE COURT: I'm not deciding anything.

08:50:55 25 MR. STOFFELMAYR: Thank you.

1 THE COURT: I'm simply -- there will be a  
2 recording of his testimony, okay? And so correct,  
3 absolutely, that's all I'm deciding.

4 So with that, with that understanding and  
08:51:08 5 the fact that it will be done in a way that no one will  
6 see or know it, I'll allow it.

7 MR. WEINBERGER: Your Honor, just from a  
8 technology standpoint, we're making contact with Court  
9 Connect today.

08:51:23 10 THE COURT: Okay.

11 MR. WEINBERGER: They're running the live  
12 stream through the sound system in this courtroom.

13 THE COURT: All right.

14 MR. WEINBERGER: And so the, as I  
08:51:34 15 understand it, at points in time, the live streaming has  
16 some difficulty in picking up the microphone from the  
17 witness.

18 And so we're going to make contact with  
19 Court Connect, and we'll work with the Court's IT and  
08:51:51 20 with Robert.

21 THE COURT: Okay.

22 MR. WEINBERGER: And we'll figure out how  
23 we ensure that that occurs smoothly.

24 THE COURT: Okay. And I don't want any  
08:51:59 25 recording if there are any bench side-bar conferences.

1 MR. WEINBERGER: Yes.

2 THE COURT: I don't want that recorded.

3 Only his testimony.

4 MR. WEINBERGER: Yes, sir.

08:52:09 5 THE COURT: The questions and answers.

6 All right. At the end of the day,

7 yesterday we got into a heated discussion about

8 documents. All right.

9 Look, I've got the best lawyers in the

08:52:23 10 country here, and this is a case of national importance.

11 We're not going to spend 150 hours wasting

12 time on documents, so this is what we're going to do.

13 I've discussed this with Special Master

14 Cohen. He was under the understanding that there were no

08:52:43 15 challenges to authenticity. If there are challenges to

16 authenticity, this is what's going to happen.

17 If I -- if I believe the document is

18 presumptively reliable, I will allow either side to use

19 it in examining a witness.

08:52:59 20 If the other side feels the document is not

21 authentic, they will present a witness live to contest it

22 and the jury will hear that.

23 And if I ultimately decide the document

24 isn't reliable, it won't come into evidence. Again, it

08:53:19 25 can be used in examining a witness because it, you know,

1 may be relevant to the witness's testimony, but it won't  
2 come into evidence if I ultimately decide it's not  
3 reliable.

4 And so the one document that was challenged  
08:53:31 5 was this, a document was located in Purdue's file that  
6 was authenticated by Purdue's lawyers, but apparently was  
7 not located in CVS's files. It refers to a proposed  
8 business relationship about 20 years ago between CVS and  
9 Purdue.

08:53:56 10 So, Mr. Delinsky, if you're challenging the  
11 authenticity, you've got to produce someone that says not  
12 only has he or she searched the files and it doesn't  
13 exist there but also there's nothing like it or nothing  
14 relating to that business dealing, which suggests that  
08:54:14 15 the document isn't authentic.

16 And then I'll make a decision.

17 So that's what we'll do with authenticity.

18 Now, business records produced by either  
19 side, but by any defendant, not only are they authentic,  
08:54:35 20 but they're admissible, but they have to be brought in  
21 through a witness who's providing relevant testimony in  
22 connection to the document.

23 I'm not about to have hundreds of documents  
24 just sort of admitted and then we get up in closing  
08:54:52 25 argument and counsel is essentially testifying about

1 documents that have never been used with a witness.

2 That wouldn't be proper and would be  
3 unintelligible.

4 So you have to have used the document with  
08:55:06 5 a witness, or it comes in through some -- some  
6 stipulation. Okay? And if it's used with a witness, it  
7 can be offered, okay?

8 And if it's admissible, it's admissible.  
9 If it's not relevant, presumably someone would have  
08:55:22 10 objected to the whole line of questioning with that  
11 witness saying it's not relevant to this case and I would  
12 have dealt with it.

13 If it's been used in the questioning of a  
14 witness, and there was no objection, it is per se  
08:55:37 15 relevant.

16 So again, that's the way we're going to  
17 deal with it.

18 Anyone have any problem with that?

19 MR. LANIER: Works.

08:55:50 20 MR. STOFFELMAYR: No, Your Honor.

21 THE COURT: Okay. Fine. That was smooth.

22 MR. DELINSKY: Your Honor, we do object.

23 I guess it would be preliminary admission  
24 to that one Purdue document we talked about.

08:56:02 25 THE COURT: I haven't admitted it.

1 It was used, all right, it's a little late  
2 to object to it -- I mean it was used.

3 I haven't admitted it.

4 MR. DELINSKY: Yes. Understood, Your  
08:56:10 5 Honor.

6 THE COURT: It's been offered, and I'm  
7 holding off ruling until if you produce a witness, I'll  
8 certainly listen to him or her, and if I determine that  
9 it's not authentic, I won't admit it.

08:56:23 10 MR. DELINSKY: Thank you, Your Honor.

11 THE COURT: Like any other document.

12 If I'm not -- if I'm not convinced it's  
13 authentic, either side's document, it's not going to be  
14 admitted.

08:56:36 15 So, all right, Mr. Lanier, you  
16 were -- well, I did read -- thank you, I read  
17 Mr. Catizone's supplemental report so I'm familiar with  
18 it.

19 The plaintiffs have advised me, I assume  
08:56:58 20 they advised everyone, that they plan to use P 00511, the  
21 first 32 pages of it, with Mr. Catizone.

22 All right. Is this a document that he  
23 relied on in preparing his first report?

24 MR. LANIER: Yes, it is, Your Honor.

08:57:16 25 THE COURT: All right. Well --

1 MR. DELINSKY: Your Honor, may I be heard  
2 on that briefly?

3 THE COURT: All right.

4 MR. DELINSKY: Your Honor, the applicable  
08:57:23 5 rule, my understanding is that the plaintiffs are not  
6 seeking admission of the document; just seeking to  
7 publish it and use it.

8 THE COURT: Well, they are publishing it.

9 They can -- they're going to -- they're  
08:57:35 10 allowed to question -- any party is allowed to question  
11 any expert on anything that the expert used in his  
12 report, saying it's a basis for his or her opinion.

13 MR. DELINSKY: Well, the exception, Your  
14 Honor, is set forth in Rule 703, okay, and 703 is the  
08:57:53 15 rule that says they can base an opinion, without a doubt,  
16 there's no doubt about it, an expert can base an opinion  
17 on inadmissible -- on inadmissible information or  
18 evidence, but if the underlying document in this case --

19 THE COURT: Robert, will you give me my  
08:58:18 20 rules, please, 703?

21 MR. DELINSKY: I can hand mine up to you,  
22 Your Honor.

23 THE COURT: This microphone is a problem.

24 MR. DELINSKY: But, Your Honor, what the  
08:58:28 25 rule says is that if it's inadmissible, the proponent,

1 here, the plaintiffs, only can disclose them to the jury  
2 if their probative value in helping the jury  
3 substantially outweighs the prejudice so it turns Rule  
4 403 around, Judge, and it puts the burden on the  
08:58:50 5 plaintiff.

6 Your Honor, I can hand Your Honor --

7 THE COURT: This is a nuisance.

8 (Pause.)

9 MR. DELINSKY: So, Your Honor, we're  
08:59:59 10 talking about in this instance a survey where the  
11 probative value is low. It doesn't mention any defendant  
12 in this case, those pages.

13 THE COURT: Right.

14 MR. DELINSKY: And, number two, Your Honor,  
09:00:09 15 you'll recall this from the briefing, the response rate  
16 is so low, it's a 25 percent response rate that it is a  
17 truly incomplete survey reflective of responsiveness by  
18 us, whereas on the flip side, the prejudice of bringing  
19 that in is extremely substantial.

09:00:33 20 Now, it is, in this context under 703, it  
21 is plaintiffs' burden to show the probative value  
22 outweighs the prejudice.

23 We submit that they cannot possibly meet  
24 that, that burden here, under the circumstances.

09:00:52 25 MS. SULLIVAN: And, Your Honor, just to add

1 to that in terms of the objection, the prejudice is  
2 multiplied because the survey is just not based on  
3 customer experience with these four pharmacists's  
4 experience with these four pharmacies, it's state-wide so  
09:01:06 5 it has information --

6 THE COURT: That's a problem. One, it's  
7 state-wide, it's not these counties.

8 Two, it's not defendant-specific.

9 There are hundreds of pharmacies, and  
09:01:20 10 that's my -- that's my concern.

11 And it's --

12 MR. LANIER: Your Honor, may I be heard,  
13 please?

14 THE COURT: Okay.

09:01:28 15 MR. LANIER: The charts that I was planning  
16 on using, for example at Page 7, actually does divide up  
17 the answers.

18 You'll see that it has large chain  
19 stand-alone. You'll see that it has large chain grocery.  
09:01:50 20 It's got small chain. It's got mail order, long-term  
21 care, outpatient, independent, and it breaks those apart.

22 And so you're able to see, as we already  
23 know from defendants as they've testified and argued,  
24 that they are large chain stand-alone, at least three of  
09:02:16 25 the defendants I should say, that they are among the

1 largest in the United States. They're really, other than  
2 Rite Aid, are going to be very few, if any, in the State  
3 of Ohio.

4 So those are the charts that I'm using. It  
09:02:34 5 doesn't do me any good to just use the general figures  
6 for everybody. I've got to only look at the large chain  
7 stand-alone. I don't know whether or not Giant Eagle is  
8 in the large chain grocery or not, and so I don't plan on  
9 using this in regards to Giant Eagle.

09:02:53 10 I plan on using this in regards to CVS and  
11 Walgreen, maybe Walmart is in large chain grocery, I'm  
12 not a hundred percent sure.

13 THE COURT: Which specific charts do you  
14 plan to use?

09:03:05 15 MR. LANIER: I would use the chart on  
16 Page 7. I would use the chart on --

17 THE COURT: So that I have adequate time to  
18 complete my job in a safe and effective manner by  
19 practice site, and the respondents can mark strongly  
09:03:21 20 disagree, disagree, neutral, agreed, strongly agree.

21 MR. LANIER: Yes, sir.

22 That is one figure that I would use.

23 MR. DELINSKY: And, Your Honor, the  
24 problem --

09:03:30 25 THE COURT: Hold it. I just want to see

1 what charts he's going to use and then we can discuss it.  
2 All right.

3 MR. LANIER: The second chart would be the  
4 one on Page 9. And again, I would only be using large  
09:03:40 5 chain stand-alone with reference to CVS --

6 THE COURT: "I feel my employer provides a  
7 work environment that allows for safe patient care by  
8 practice site."

9 MR. LANIER: And then I would use the one  
09:03:49 10 on Page 11.

11 THE COURT: "Pharmacy has sufficient  
12 pharmacist staffing."

13 MR. LANIER: That allows for patient  
14 safety.

09:04:02 15 Any then I would use the one on Page 13,  
16 which is "sufficient pharmacy technician staffing that  
17 allows for safe patient care."

18 Then I would use the chart on Page 15, "I  
19 feel that inadequate staffing results in delays in  
09:04:20 20 patients receiving medications in a timely manner."

21 I would use the chart on Page 17, "I feel  
22 pressure by my employer or supervisor to meet standards  
23 or metrics that may interfere with safe patient care."

24 Then I would use the chart on Page 19, that  
09:04:43 25 says, "I feel that the workload-to-staff ratio allows me

1 to provide for patients in a safe manner."

2 And then number 21, "I am given the  
3 opportunity to take lunch breaks or other breaks  
4 throughout the workday by practice site."

09:05:04 5 Those are the charts and pages that I plan  
6 on using. I don't believe I should be entitled to use  
7 all of the comments, and so even though they are really  
8 nice, I think that they are objectionable and should not  
9 be displayed to the jury.

09:05:15 10 I don't think that the big charts that  
11 combine all of the Ohio statistics among all the  
12 different kinds of pharmacies are specific enough to be  
13 of use or probative value, and I would not use those just  
14 because the cross-examination would be brutal.

09:05:34 15 But I believe that these others are of  
16 extreme probative value. I think their prejudicial  
17 effect is almost nil because the defendants are entitled  
18 to cross-examine the witness and say, "You don't know if  
19 this was just all of the Rite Aid pharmacists, you don't  
09:05:51 20 know which pharmacists it was."

21 THE COURT: Look, I'm not going to allow  
22 this with Mr. Catizone, but the defendants need to  
23 understand that they may very well open the door to this,  
24 depending on what they do in their defense.

09:06:04 25 All right? If any -- you know, I don't

1 know what your corporate representatives are going to say  
2 on the stand about your pharmacy practice, all right, but  
3 this document -- everyone knows this document is there.

4 So if, depending on what they say, if that  
09:06:24 5 opens the door to being cross-examined with this,  
6 defendants -- plaintiffs can certainly use it. But at  
7 this point, at this point with this witness, since the  
8 only relevance is that this is one of a whole lot of  
9 things that he may have relied on, and since his primary  
09:06:40 10 testimony -- he didn't interview any pharmacists. He  
11 looked at the policies and then today he's going to  
12 testify that his examination of the actual documents and  
13 the red flags and whatever notes, that's what he's  
14 talking about.

09:06:58 15 He's not opining as to what may have caused  
16 it or prompted it. I'm not going to allow the plaintiffs  
17 to use this with Mr. Catizone.

18 MR. WEINBERGER: Your Honor, they've  
19 already opened the door through Mr. Davis.

09:07:12 20 Mr. Davis on multiple occasions said that  
21 CVS is proud of the environment and the tools that they  
22 give their pharmacists.

23 He --

24 THE COURT: Mr. Weinberger, you may have  
09:07:24 25 been able to use it with Mr. Davis, I don't know, but

1 Mr. Davis is not Mr. Catizone. Okay? That's the point.

2 MR. WEINBERGER: Okay.

3 THE COURT: All right? And the only  
4 relevance to it is that this is one of many things that  
09:07:36 5 Mr. Catizone relied on, but it certainly isn't the  
6 principal thing that he looked at.

7 He analyzed the policies, he analyzed -- he  
8 looked at the 8,000 prescriptions, the sample roughly  
9 2,000 per defendant, and he looked at the prescriptions  
09:07:56 10 that he considered red flag and then he carefully  
11 examined what, what, if anything, was written in the  
12 notes section, and he wrote a supplemental report on  
13 that.

14 So none -- none -- this Ohio, State of Ohio  
09:08:12 15 report in 2020 or 2021 doesn't bear on that at all so I  
16 think to try and use this with him is more prejudicial  
17 than probative, but that doesn't mean the analysis would  
18 be the same if you seek to use it with a witness, a  
19 representative of one of any of the defendants.

09:08:34 20 MR. LANIER: I understand the Court's  
21 ruling, and we'll abide by it, Your Honor.

22 The other thing that I want to make sure  
23 the Court's aware of, which is semi-related, I've got a  
24 copy here of documents that I do plan on displaying and  
09:08:52 25 later offering it into evidence with this witness as

1 these go to the same issue of he's testified and has  
2 opinions that the metrics, the number of -- the idea of  
3 basing a bonus on a number of prescriptions that are  
4 filled that includes opiates, the ideas of wait time,  
09:09:08 5 those metrics are, in his opinions, and these are  
6 documents relevant to the metrics of each defendant.

7 THE COURT: All right. Well, those he can  
8 look -- those are documents he looked at and that's, you  
9 know, that's not hearsay, those are admissions, those are  
09:09:27 10 authentic so my analysis is probably different on that.

11 MR. LANIER: And I think that's true, but I  
12 want to make sure I've given the defendants or will give  
13 the defendants here a copy. I want to give the Court a  
14 copy so when they come up, you've got them immediately at  
09:09:40 15 hand, but I do want to emphasize or highlight one of the  
16 documents in particular because I suspect that there will  
17 be an objection to it.

18 And that is the memorandum of settlement  
19 agreement entered between Walgreen's and the DOJ. This  
09:09:57 20 Walgreen's agreement I think under the Court's rulings  
21 does come into evidence, but I'm going to use it because  
22 part of the agreement that Walgreen's entered into said  
23 that they would remove from their bonus system a bonus  
24 based upon the number of opiates prescriptions that are  
09:10:16 25 filled.

1 MR. STOFFELMAYR: Judge, excuse me. We, as  
2 long as numbers are redacted as we've talked about many  
3 times, we don't have any objection to using that document  
4 with Mr. Catizone.

09:10:27 5 MR. LANIER: Great. Thank you.

6 And I will have, obviously, numbers  
7 redacted and numbers will not be discussed.

8 That was part of your ruling earlier.

9 THE COURT: Right. Okay.

09:10:35 10 All right. Then we'll proceed with --

11 MR. LANIER: Thank you, Your Honor.

12 THE COURT: -- bringing the jury in.

13 (Jury in.)

14 THE COURT: Okay. Good morning, ladies and  
09:12:59 15 gentlemen.

16 Please be seated.

17 Good morning, Mr. Catizone. I just want to  
18 remind you you're still under oath from yesterday.

19 THE WITNESS: Thank you, Judge.

09:13:13 20 THE COURT: All right. Mr. Lanier, you may  
21 continue.

22 MR. LANIER: Thank you, Your Honor.

23 May it please the Court, good morning,  
24 ladies and gentlemen.

09:13:22 25

1 DIRECT EXAMINATION OF CARMEN CATIZONE (RESUMED)

2 BY MR. LANIER:

3 Q. Good morning, Mr. Catizone.

4 A. Good morning, sir.

09:13:24 5 Q. We're going to jump right to it. I've got two last  
6 subjects and I'm going to try to get through them quickly  
7 with you but thoroughly.

8 The first subject are the issue of metrics.

9 Oh, Mr. Pitts, could I have the WolfVision,  
09:13:48 10 please?

11 And I want to talk about metrics or have  
12 you testify about metrics, and specifically the idea of  
13 how pharmacy stores, businesses, incentivize their  
14 pharmacists.

09:14:11 15 So let's talk about incentives.

16 What -- why are incentives important?

17 A. For any business having incentives that motivate  
18 employees to do the best job they can and provide the  
19 best customer service, it's a crucial part of business.

09:14:38 20 Q. All right. In that regard, is -- do incentives  
21 help motivate behavior hopefully?

22 A. Yes, sir.

23 Q. And do you want incentives to motivate good  
24 behavior or bad behavior?

09:14:57 25 A. I would hope good behavior.

1 Q. And are you able to look at certain incentives that  
2 businesses may give their pharmacists and determine  
3 whether that incentive will promote safety and health?

4 A. Based on the information I've reviewed, yes, sir.

09:15:17 5 Q. And did you actually, in forming your opinions in  
6 this case, have an opportunity to look at some documents  
7 that reflect some of the incentives of these defendants?

8 A. Yes, sir.

9 Q. And did you find any that were troubling?

09:15:37 10 A. Yes, sir.

11 Q. So in terms of the troubling ones, I'd like to know  
12 whether or not you consider a bonus based on the number  
13 of prescriptions filled.

14 Is that a good incentive, motivation for  
09:16:04 15 public health, or not?

16 A. In the context of what we're talking about, that  
17 was not a good incentive.

18 It was an incentive that actually impacted  
19 the pharmacists's ability to do what they were supposed  
09:16:16 20 to do.

21 Q. So like on filling opiate prescriptions, you  
22 consider it not a good incentive?

23 A. No. Filling opiate prescriptions that should not  
24 be filled is not a good incentive.

09:16:28 25 So if the incentive says fill prescriptions

1 regardless if there's a valid legitimate reason for that,  
2 and fill prescriptions that you shouldn't fill because  
3 there's an incentive to make more money, that's not a  
4 good incentive.

09:16:42 5 Q. Did you see over time that these incentives changed  
6 with various defendants?

7 A. Yes, I did.

8 Q. So, for example, we have Plaintiffs' Exhibit 14750,  
9 which I'll display to the jury and to you.

09:17:02 10 This is a settlement and memorandum of  
11 agreement entered into between the Department of Justice  
12 Drug Enforcement Administration and Walgreen's with its  
13 subsidiaries.

14 Do you see this?

09:17:17 15 A. Yes, sir.

16 Q. And it's one that will be applicable to Walgreen's  
17 corporate and any facility owned and operated by  
18 Walgreen's registered to dispense or otherwise handle  
19 controlled substances or List 1 chemicals.

09:17:37 20 Do you see that as well?

21 A. Yes, sir.

22 Q. If we go towards the back of this agreement, we'll  
23 see, as part of the agreement, Section 6, and this  
24 Section 6 is the addendum -- well, let me first show the  
09:17:54 25 addendum.

1 Prospective compliance, what does that  
2 mean?

3 A. That's compliance that the DOJ and DEA expected  
4 going forward, to take that before something happened  
09:18:08 5 rather than reactive compliance, which means to take  
6 action after it happens.

7 Q. Okay. And in that regard, we've got a number of  
8 different things where Walgreen's has agreed to changes  
9 in the way they go about business, and I would like to  
09:18:24 10 focus on number six.

11 Do you see this?

12 A. Yes, sir.

13 Q. Can you read that to the jury, please?

14 A. "Beginning in 2014, Walgreen's will exclude any  
09:18:37 15 accounting for controlled substance prescriptions  
16 dispensed by a particular pharmacy from bonus  
17 computations for pharmacists and pharmacy technicians at  
18 that pharmacy."

19 Q. So 2014, Walgreen's policy changes after this  
09:18:55 20 settlement agreement with the DEA, is that your  
21 understanding?

22 A. Yes, sir.

23 Q. Okay. Do you believe that good businesses should  
24 wait to get their incentives properly aligned until after  
09:19:15 25 DEA actions?

1 MS. SWANSON: Objection, Your Honor.

2 THE COURT: Overruled.

3 A. No, sir.

4 BY MR. LANIER:

09:19:29 5 Q. Okay. Now, if we continue to look beyond  
6 Walgreen's, we can look, for example, at Walmart, and I  
7 will display to the jury Plaintiffs' Exhibit 21572,  
8 Walmart pharmacy Facility Management Incentive Plan For  
9 Fiscal Year 2012.

09:19:52 10 Do you see that?

11 A. Yes, sir.

12 Q. And again, these are documents that you've looked  
13 at and relied upon in your report, is that fair to say?

14 A. Yes, sir.

09:20:03 15 Q. And Walmart, on Page 3 of 21, in dealing with their  
16 incentive plan, gives some definitions.

17 Look at their definition of script count.

18 It reads, "End of month prescriptions after credit

19 returns are accounted for. Year end script count is

09:20:30 20 determined by summing the 12-month totals as reflected on  
21 the monthly P & L," which I think parties will stipulate  
22 means profit and loss.

23 Would you explain what that means, please?

24 A. Sure.

09:20:46 25 The first part of that means that sometimes

1 people do not pick up their prescriptions and, therefore,  
2 those prescriptions would be credited and those  
3 prescriptions are taken out of the total prescriptions  
4 that pharmacy filled for the year.

09:20:59

5 And the summing is just all of the  
6 prescriptions that that pharmacy filled and added up for  
7 the year.

09:21:14

8 Q. Now, part of the Walmart incentive plan that's  
9 shown on Page 4 is this added comment of customer  
10 experience.

11 It says, "That's measured on feedback from  
12 Walmart shoppers who responded to experience track survey  
13 invitations printed on their receipts."

09:21:34

14 Now, they give the impression of their  
15 pharmacy experience on a one to 10 scale. Can that be a  
16 good and a -- a positive and a negative motivator?

17 A. Yes, sir.

18 Q. Can you explain to the jury the positives and the  
19 negatives built into such a broad incentive?

09:21:49

20 A. Sure.

21 As customers of all of the defendants,  
22 probably, at one point or another or other retail  
23 establishments, customers need to be treated well and  
24 feel that's a positive experience.

09:22:02

25 So if I'm operating a business, I want to

1 know that my staff is doing a nice job with my customers  
2 and I would put in there factors and monitor factors that  
3 would help me improve that customer service.

4 That would be a very good incentive and  
09:22:16 5 something most businesses do as part of their routine.

6 A bad incentive would be looking at those  
7 customer surveys and forcing or directing the pharmacists  
8 to take actions that's against standards of care or  
9 against regulations in dispensing prescriptions just to  
09:22:32 10 improve customer satisfaction.

11 That would not be a good incentive.

12 Q. Okay. Now, as we continue to work through this on  
13 Page 10, Walmart explains, "An additional MIP," which I  
14 believe means Management Incentive Plan, and it talks  
09:22:55 15 about how a facility may be eligible to receive  
16 additional Management Incentive Plan if the number of  
17 scripts meets or exceeds 190,000 for the year.

18 "In order to be eligible for the additional  
19 Management Incentive Plan, the facility must first meet  
09:23:21 20 80 percent profit qualifier, if the store achieves or  
21 exceeds 190,000 scripts, each eligible associate in the  
22 store will receive an additional amount equivalent to the  
23 total award as calculated using the performance measures  
24 in the previous section."

09:23:40 25 And then it gives an example of how many

1 scripts and how much profit mixed in with the customer  
2 experience.

3 Is this a good or a negative -- time out.  
4 I've got it too wordy.

09:24:00 5 Do you see the section I talked about and  
6 I've put into the record?

7 A. Yes, sir.

8 Q. Now, in terms of Walmart doing this, is that a  
9 positive or a negative on health and safety when it comes  
09:24:13 10 to opiate prescriptions?

11 A. In my opinion, it's a negative, sir.

12 Q. Would you explain why?

13 A. Yesterday we talked about how the systems did not  
14 reward pharmacists for refusing prescriptions or  
09:24:27 15 conducting DUR.

16 What this incentive says to the pharmacy  
17 and the pharmacist and pharmacist technicians is that I  
18 am not going to be rewarded financially unless I reach  
19 190,000 prescriptions.

09:24:41 20 So if I fill less than 190,000  
21 prescriptions because I've rejected prescriptions or  
22 because I've taken my time to do my due diligence, I'm  
23 going to get penalized for that even if it's better for  
24 the customer and better for the pharmacy, because of the  
09:24:57 25 service and the quality of care I'm providing.

1                   There's nothing in that incentive to adjust  
2                   that number for that necessary work and the necessary  
3                   things that the pharmacist should do to improve customer  
4                   service and keep the patient safe.

09:25:12 5           Q.     All right. Next, I would like to talk to you about  
6           CVS and their incentives, okay?

7                   In that regard, I will publish to the jury  
8                   Plaintiffs' Exhibit 15604, another document you reference  
9                   in your report.

09:25:28 10           It is the CVS 2006 pharmacist incentive  
11           plan.

12                   Do you recognize this document?

13           A.     Yes, sir.

14           Q.     2006 CVS says the following: "The objective of all  
09:25:46 15           CVS incentive plans is to motivate employees to exceed  
16           top line results and maximize store profit while  
17           maintaining high levels of customer service."

18                   Do you see that?

19           A.     Yes, sir.

09:26:02 20           Q.     Is there a difference from the pharmacist's  
21           perspective between an incentive plan to exceed top line  
22           results and maximizing store profit while maintaining  
23           high levels of customer service and being judicious and  
24           careful and cautious as you execute your job?

09:26:22 25           A.     It depends how that incentive was implemented.

1 If top line results are to make sure that  
2 every prescription is filled accurately and that the  
3 patient is taken care of, then that's a mutually  
4 beneficial or mutually achievable goal.

09:26:40 5 If the top line results is something that  
6 contradicts that or something that impacts that, then it  
7 wouldn't be something that would be mutually beneficial  
8 or beneficial to the pharmacist.

9 And as a business to be real, businesses  
09:26:55 10 have to make money to exist. They can't operate at a  
11 negative profit; otherwise, they go out of business. So  
12 it's in the best interests of the pharmacy and the  
13 pharmacist to make sure that the business does make money  
14 to support the business.

09:27:10 15 But to put profit ahead of patient care is  
16 not a good incentive, and that's what creates problems  
17 and impacts the pharmacist's ability to perform the  
18 things they need to perform.

19 Q. All right. In this regard, if you look at this  
09:27:26 20 incentive plan, it goes on to say that in 2006  
21 pharmacists have the opportunity to earn incentives above  
22 target based on store script performance.

23 Can you explain what store script  
24 performance means in your expertise?

09:27:42 25 A. I'm not sure of what it means in this specific

1 context, but what my experience has been, it means  
2 filling a maximum number of prescriptions, filling more  
3 generics than brand names, and making sure that your  
4 inventory stays below a certain level, which means when  
09:28:01 5 customers come in for the medications, you may not have  
6 it in stock because you're trying to keep the inventory  
7 low and meet some of those performance or some of those  
8 script performance goals.

9 Q. It continues to say, "Payouts increase  
09:28:15 10 significantly when script budgets are exceeded, up to a  
11 maximum payout of three times the target."

12 And that's in bold and italics.

13 What does that tell you?

14 A. I can make a lot of money by reading -- meeting my  
09:28:34 15 budget goals regardless of how I get there.

16 Q. And then there's a section entitled, Incentive Plan  
17 Metrics for CVS, gives some examples and says, "The  
18 incentive is based on your store's performance in the  
19 following three metrics." The very first one is number  
09:28:56 20 of scripts measured against the store budget with weekly  
21 operating result and a 50 percent incentive at the  
22 target.

23 If you're including opioid prescriptions in  
24 this incentive plan, is that good or bad for community  
09:29:20 25 and patient health?

1 A. Based on what I know with opiates, opioids and what  
2 we're seeing, that's not a good incentive to include  
3 that.

09:29:33

4 Q. So down at the bottom, they give some very  
5 specifics.

09:29:51

6 Average weekly script volume, depending  
7 upon what it is, if the target is -- or the incentive is  
8 there for the staff and the incentive is there for the  
9 leader, the money is shown to be what it can be under the  
10 incentive plan.

11 Do you see that?

12 A. Yes, sir.

13 Q. A good or a bad thing?

09:30:02

14 A. In what we're talking about, that's a bad thing,  
15 sir.

16 Q. All right. Now, is it fair to say over time, these  
17 policies changed like we saw with Walgreen's?

18 A. Yes, sir.

09:30:22

19 Q. I'd like to show one additional time with CVS, and  
20 this will be Plaintiffs' Exhibit 20695, which we'll  
21 display at this point.

22 It's the WeCare performance reporting flow  
23 chart.

09:30:46

24 Did you take this into account as well,  
25 sir?

1 A. Yes, sir.

2 Q. And this is another CVS document where it's talking  
3 about incentives and it sets -- speaks of properly set  
4 waiter expectations, since the inception of PSI,  
09:31:03 5 providing waiting prescriptions in 15 minutes or less is  
6 a differentiator of CVS Pharmacy compared to our  
7 competition.

8 What does that mean, sir, to you as a  
9 pharmacist?

09:31:21 10 A. As a pharmacist, what it's saying is if customers  
11 are looking for a pharmacy to choose one of the selling  
12 points that CVS markets, if you come into our pharmacy,  
13 we'll fill your prescription in 15 minutes or less.

14 Almost like Domino's Pizza. If you show up and let us  
09:31:38 15 know you're there, we'll have your pizza out to you in  
16 less than 15 minutes.

17 Q. In this regard, sir, we've got some -- a scenario  
18 that is given on Page 18 of this document, and this  
19 scenario talks about providing a wait time of less than  
09:31:55 20 or equal to 15 minutes. It talks about if a prescription  
21 is verified by the promised time, if the prescription is  
22 picked up close to the verification, does it give credit  
23 to the team.

24 Do you see that?

09:32:10 25 A. Yes, sir.

1 Q. And so as we work through this, if you provide a  
2 wait time of less than or equal to 15 minutes, and if you  
3 have the prescription verified by promise time and if you  
4 pick it up close to verification, you get credit for the  
5 team.

09:32:31

6 True?

7 A. Yes, sir.

8 Q. But if you don't provide a wait time of less than  
9 or equal to 15 minutes, even if you get it verified by  
10 promise time, and it's picked up close to verification,  
11 the team gets no credit.

09:32:44

12 Do you see that?

13 A. Yes, sir.

14 Q. When it comes to opioids dispensing, is that a good  
15 or bad policy?

09:32:55

16 A. It's a bad policy, sir.

17 Q. Why?

18 A. As we've talked about, the opioids are a very  
19 dangerous drug, and to expect the pharmacist to resolve  
20 any red flags in 15 minutes or less puts a real risk to  
21 the patient.

09:33:08

22 If this incentive had said we're going to  
23 exclude certain prescriptions because as a customer, no  
24 one wants to wait for 45 minutes or an hour in a  
25 pharmacy, that's just not good customer service, but you

09:33:22

1 also want the pharmacist to take the time to make sure  
2 you and your family receive the right prescription.

3 If this incentive takes away from that time  
4 and puts you and your family at risk, it's not a good  
09:33:35 5 incentive.

6 So it's not bad to have some metrics that  
7 make sure the customers get taken care of in the right  
8 amount of time, but it's a bad metric when it comes to  
9 opioids and other prescription medications that require  
09:33:47 10 extra time and extra care.

11 Q. And we're about to move into the red flag analysis  
12 that you did of the prescriptions in these counties, but  
13 before we do, I want to tie it into that idea.

14 Does 15 minutes or less give you -- on an  
09:34:09 15 opioid prescription, give you time to properly chase down  
16 red flags most of the time?

17 Does it give you time, especially when you  
18 consider you've got all these other prescriptions coming  
19 in that you've got to fill in the same 15-minute  
09:34:21 20 timeline?

21 A. As a pharmacist, sir, the answer is no.

22 The only prescriptions you could probably  
23 fill in 15 minutes or less are maintenance medications  
24 that patients have been on for a while, medications for  
09:34:35 25 high blood pressure, diabetes, some other disease and

1 there's no change in that patient, no change in that  
2 medication, those types of prescriptions could probably  
3 be filled in 15 minutes or less, but new prescriptions,  
4 opiate prescriptions, multiple prescriptions, it's going  
09:34:50 5 to take longer than 15 minutes as a pharmacist.

6 Q. All right. And then the final one in this subject  
7 area, before we move on to the actual prescription notes,  
8 is the Plaintiffs' Exhibit 9546. This is the Giant Eagle  
9 bonus for their pharmacy in 2014.

09:35:10 10 The pharmacy bonus program -- let me first  
11 ask you did you rely on this document in your analysis?

12 A. Yes, sir.

13 Q. "The pharmacy bonus program is designed to  
14 encourage team members to work as a team toward a common  
09:35:29 15 goal of improving company profitability, prescription  
16 volume and customer service."

17 Again, there's no problem with the company  
18 wanting to be profitable, agreed?

19 A. Yes, sir.

09:35:43 20 Q. There's no problem with wanting to be able to do a  
21 lot of business and fill a lot of prescriptions.

22 That in itself is not a bad thing, is it?

23 A. No, sir.

24 Q. And customer service is certainly applaudable, all  
09:35:56 25 customers, we all appreciate that, right?

1 A. Yes, sir.

2 Q. But if you look at how they go about doing this,  
3 their bonus percentages, they are based upon the salary  
4 at the beginning of the fiscal year, and then there are  
09:36:14 5 individual minimum targets and maximum percentages  
6 established by job level.

7 Do you see that?

8 A. Yes, sir.

9 Q. And one of the pharmacy performance modifiers is  
09:36:29 10 prescription unit volume.

11 Do you see that as well?

12 A. Yes, sir.

13 Q. Now, again, if you do zero to 1,500 units, there's  
14 not anything.

09:36:41 15 1501 to 2,500, units, you get a half  
16 percent; 2501 to 3500, you get one percent. And if  
17 you're above 3500, you get one-and-a-half percent.

18 If that type of a metric is given and it  
19 includes opioid dispensing, is that a good or a bad thing  
09:37:07 20 related to public health?

21 A. It's a bad thing, but, Mr. Lanier, could you go  
22 back to that chart, please?

23 There was something that I'd like to point  
24 out as well.

09:37:15 25 Q. Okay.

1 A. So if you go up above to the salary levels, so in a  
2 typical chain pharmacy environment, there's a district  
3 manager and then a pharmacy manager and a store manager.

4 Those individuals set the hours of  
09:37:34 5 pharmacists and technicians in that pharmacy.

6 The pharmacist has little or no control  
7 over that help. They can request additional help but it  
8 has to go through that process.

9 This incentive line item here is an  
09:37:47 10 incentive for that pharmacy manager or that store manager  
11 to keep salaries in the pharmacy low so that it looks  
12 better on their incentives and that's why many times,  
13 there's understaffing in the pharmacies because they're  
14 trying to keep those salaries low, which is not a good  
09:38:04 15 incentive as well.

16 Q. Okay. So this incentivizes lower staffing?

17 A. Yes, sir.

18 Q. As well as volume writing of prescriptions.

19 Fair?

09:38:20 20 A. Yes, sir.

21 Q. All right. Thank you, sir.

22 Last subject to speak with you about, I  
23 want to talk about the stores, individual store's red  
24 flags that you've analyzed in this case.

09:38:37 25 Okay?

1 A. Yes, sir.

2 Q. Now, some of this can be -- well, the numbers Geeks  
3 on the jury will have a good time with it, but I want to  
4 try to organize it as carefully as I can to make it make  
09:38:53 5 sense.

6 And this is -- I'm going to need your help,  
7 okay?

8 I'll start with your opinion that you  
9 expressed yesterday, "Is dispensing of red flag  
09:39:07 10 prescriptions without conducting adequate investigation  
11 or due diligence likely to lead to diversion?"

12 Your testimony on that is?

13 A. Yes, sir.

14 MR. WEINBERGER: Excuse me, Your Honor.  
09:39:19 15 Robert, that screen back there is out.

16 THE CLERK: What screen?

17 A JUROR: The back one.

18 (Discussion had off the record).

19 THE COURT: Someone from IT is coming but I  
09:43:50 20 guess if the jurors can look, that big screen is working.  
21 Look at that one.

22 BY MR. LANIER:

23 Q. Okay. Mr. Catizone, I'm going to ask you to also,  
24 as much as you can, look at this screen because I want to  
09:44:12 25 make sure that the writing is big enough for people from

1 your distance to be able to read it. Okay? Because the  
2 jurors are going to have to read from the far end this  
3 screen.

4 Will you do that for me, please, sir?

09:44:26 5 A. Yes.

6 Q. Thank you.

7 And if it's not big enough, I can't ask the  
8 jurors but I can ask you to tell me it's not big enough.

9 Okay?

09:44:34 10 A. Yes.

11 Q. All right. You gave the opinion yesterday, you've  
12 just expressed it again, is dispensing of red flag  
13 prescriptions without conducting adequate investigation  
14 or due diligence likely to lead to diversion?

09:44:46 15 You said yes.

16 In that regard, when a pharmacist gets to  
17 their computer terminal and they get a prescription in,  
18 and whether paper, but on the terminal, they get an  
19 electric prescription, is there some kind of a screen  
09:45:09 20 that they -- a form that's there?

21 A. That will vary by pharmacy, but there's some sort  
22 of mechanism, some sort of form, some sort of profile  
23 that the pharmacist completes based on their dispensing  
24 software.

09:45:23 25 Q. And like you say, it will vary, depending upon

1 which pharmacy has what kind of software and what kind of  
2 program their IT department wrote or wherever they got  
3 it.

4 Right?

09:45:35 5 A. Correct. And whether the IT is working that day or  
6 not.

7 Q. Good point.

8 I would assume, having talked to you before  
9 and having taken some witnesses, that there are what are  
09:45:49 10 called fields on that screen, boxes to be filled in.

11 Is that right?

12 A. Yes, sir.

13 Q. And so one might be the name of the patient or  
14 customer, right?

09:46:03 15 A. Yes, sir.

16 Q. One might be the name of the doctor, right?

17 A. Yes, sir.

18 Q. One might be the number of the prescription.

19 Fair?

09:46:22 20 A. Yes, sir.

21 Q. One might be the drug name, right?

22 A. Yes, sir.

23 Q. One might be the dosage?

24 A. Yes, sir.

09:46:43 25 Q. One might be insurance or cash payment?

1 A. Yes, sir.

2 Q. Huh?

3 A. Yes, sir.

4 Q. Now, there are going to be lots of other fields, I  
09:46:59 5 would assume?

6 A. Yes.

7 Q. Are there also fields in there, and specifically in  
8 the notes that you looked at from these pharmacies, are  
9 there fields that talk about or allow the pharmacist to  
09:47:15 10 put information about red flags?

11 A. Yes, sir.

12 Q. Can you tell the jury a little bit about that; any  
13 fields that you think I ought to add on here?

14 A. I think I would just add a general notes field  
09:47:32 15 because among the various pharmacies, those fields differ  
16 in what they're called and where they appear in the  
17 patient profile or in the dispensing process, but there's  
18 an ability for pharmacists to free form or free text in  
19 information about that prescription, about that patient,  
09:47:52 20 about that prescriber that's important information to

21 document for that prescription as well as for other  
22 pharmacists or people looking at prescription afterwards.

23 Q. All right. And these prescriptions, do they have  
24 places, then, that will alert you to red flags?

09:48:12 25 A. Most of the dispensing systems that are in place in

1 pharmacy have what they call DUR, the drug utilization  
2 review alerts, and these are proprietary packages that  
3 are put together by companies, and those companies  
4 identify for the pharmacist drug-drug interactions,  
09:48:32 5 excessive doses, something that would be problematic with  
6 that medication or combination of medication.

7 So if a patient's taking an aspirin-based  
8 product and they get prescribed a Warfarin or Coumadin  
9 product to thin their blood, an alert would come up to  
09:48:49 10 the pharmacist saying this is a dangerous combination,  
11 could cause excessive bleeding in the patient.

12 How that's presented, what the information  
13 is that's presented to the pharmacist may vary from  
14 company-to-company, but it's pretty much the same basic  
09:49:02 15 alerts and the same basic information based on standards  
16 of care and the medical literature for those drugs and  
17 those diseases.

18 Q. All right. I've added a box in this drawing that  
19 says DUR alerts, and you said DUR stands for drug  
09:49:19 20 utilization review?

21 A. Yes, sir.

22 Q. And is that something that is -- do individual  
23 pharmacists, the individual pharmacists, Giant Eagle had  
24 a kind lady in here who is a pharmacist, sounds like a  
09:49:36 25 wonderful person, do those pharmacists actually develop

1 these programs and decide what goes in the alert box?

2 A. No, sir.

3 They're developed by standard-setting  
4 organizations, such as the USP, used to be called the  
09:49:53 5 United States Pharmacopeia Company. When you buy a  
6 product, it will say USP on there, which means it meets  
7 standards that have been set by this quasi-Government  
8 agency so that that medication is actually that  
9 medication.

09:50:05 10 Those types of companies develop these DUR  
11 alerts for pharmacies.

12 Q. All right. And then the DUR alerts, any other  
13 boxes of note that we should add before we start talking  
14 about these prescription fields?

09:50:23 15 And we always can come back and add them  
16 later if you see one that's relevant.

17 A. Again, there are number of boxes for pharmacist  
18 alerts or patient alerts that vary across the defendants,  
19 Mr. Lanier, so it would be difficult to list all of them,  
09:50:36 20 but --

21 Q. All right. This is -- this is good enough for now  
22 and I'll come back to this chart as we go along.

23 I'm going to start with CVS, so in the far  
24 corner over there, Mr. Delinsky and Mr. Bush's client,  
09:50:52 25 CVS.

1 Now, each of these defendants provided a  
2 sample of the red flag prescriptions, the fields of notes  
3 associated with those red flag prescriptions.

4 Is that right?

09:51:18 5 A. Yes, sir.

6 Q. And we talked about this yesterday, but you looked  
7 at --

8 MR. DELINSKY: Mr. Lanier, excuse me one  
9 moment.

09:51:25 10 Your Honor, we should probably make clear  
11 for the record these were randomized samples, not  
12 anything hand picked by anybody.

13 MR. LANIER: Right. He's right, Judge.

14 THE COURT: All right.

09:51:34 15 MR. LANIER: I'll clarify that.

16 BY MR. LANIER:

17 Q. These were not hand-picked by the defendants.

18 This was a randomized sample overseen by  
19 His Honor and his staff to make sure that a random  
09:51:44 20 section was provided.

21 Are you with me?

22 A. That's my understanding, sir.

23 Q. And is it also your understanding that this was run  
24 from the red flags that we identified based upon your  
09:52:02 25 concept so that these prescriptions would have flagged

1 those red flags you've told us about?

2 A. If I can repeat back to make sure I understand.

3 So from the prescriptions that were  
4 identified that had red flags, this was a randomized  
09:52:20 5 subset of those red flags, those prescriptions.

6 Q. Okay.

7 A. That's my understanding, sir.

8 Q. Yes. All right. So you're looking at  
9 prescriptions that have been identified as having red  
09:52:34 10 flags, it's a random subset, not hand-picked by anybody,  
11 right?

12 A. Yes, sir.

13 Q. And then you went and read all of them, right?

14 A. Yes, sir.

09:52:45 15 Q. And so the notes for CVS, you've got -- and let's  
16 put your slide up, and this is really going to be tough.

17 Are you able to read it from there?

18 A. Somewhat. I don't know if the jurors can read it.

19 Actually if I cover one eye, I can see it.

09:53:08 20 Q. I'm sorry, I can't hear you.

21 A. I can see most of it, sir.

22 MR. WEINBERGER: Your Honor, could we take  
23 a short break?

24 THE COURT: All right. I think we will  
09:53:17 25 have to and hopefully we can get it fixed.

1 All right. Ladies and gentlemen, we are  
2 going to take our midmorning break and hopefully we can  
3 fix the monitors so we will take a 15-minute break now.

4 (Jury out.)

10:00:11 5 (Recess taken.)

6 THE COURT: Okay. Please be seated.

7 Fortunately, we have the monitors working  
8 with the very high tech technique of unplugging things  
9 and plugging them back in.

10:14:05 10 (Laughter.)

11 THE COURT: So that seems to have worked so  
12 far.

13 So, Mr. Catizone, I just want to remind you  
14 you're still under oath.

10:14:14 15 THE WITNESS: Yes, sir.

16 MR. LANIER: Thank you, Your Honor.

17 May it please the Court and thanks to the  
18 Court's technicians for getting that fixed.

19 BY MR. LANIER:

10:14:22 20 Q. Mr. Catizone, during the break, I'm trying to get  
21 in my brain to make sure I've covered everything, and I'm  
22 worried about a couple of things I want to clarify so  
23 that we can best understand where we're going.

24 First of all, that DUR alert box, let's  
10:14:41 25 talk about what it is and what it isn't.

1 It's been referenced to the jury in opening  
2 and we're going to need to be clear on what it is.

3 You described it as what? Drug-to-drug --

4 A. No, it covers the whole gamut of the Drug  
10:15:08 5 Utilization Review process so if there's a drug-drug  
6 interaction, the pharmacist would receive an alert.

7 Q. That's the example you gave of aspirin and  
8 Coumadin?

9 A. Correct, sir.

10:15:20 10 If there was an excessive dose, that also  
11 would be an alert.

12 So basically, anything that's outside of  
13 what the recommended dose, dosage and therapy is, would  
14 trigger one of those DUR alerts.

10:15:40 15 Q. All right. What else?

16 Anything?

17 A. There's a whole list of --

18 Q. Well, let me ask it this way.

19 Does the DUR alert ever, ever, ever stand  
10:15:53 20 for identifying red flags and opiates beyond maybe the  
21 interaction of opiates with other drugs?

22 A. Because some of the red flags cut over to the  
23 clinical side, for example, a dose that would be too high  
24 is a red flag for opioids, that's also a DUR alert.

10:16:20 25 An early refill is a red flag. That would

1 also be a DUR alert.

2 The combinations of drugs that would create  
3 concern for patients is also a DUR alert.

4 And then based upon the DUR alerts that  
10:16:40 5 I've reviewed of the defendants, if it's a drug of  
6 possible abuse, that's another DUR alert that shows for  
7 the pharmacist.

8 Q. All right.

9 And dose, early refill, combinations, and  
10:17:02 10 then if it's a drug of possible abuse?

11 In other words, it might -- the DUR would  
12 say this is a drug of potential abuse?

13 A. Yes. Within the pharmacy world, there are two  
14 types of prescription drugs that you may have heard about  
10:17:20 15 from other witnesses.

16 One are noncontrolled. Those are the ones  
17 you take for high blood pressure, diabetes. And then the  
18 other ones are controlled substances, which we've been  
19 talking about; the opioids, the Benzodiazepines. Those  
10:17:32 20 medications, because they are prone to cause addiction  
21 and abuse, those are the drugs that would trigger some  
22 sort of alert to the pharmacist, if the DUR alert saw it  
23 was too high a dose or too long of a time of treatment to  
24 use that drug, based upon, again, what the medical  
10:17:52 25 literature says that drug should be used for and how long

1 that drug should be taken.

2 Q. All right.

3 So will the DUR tell you if your patient is  
4 fulfilling multiple scripts in multiple different  
10:18:11 5 locations?

6 A. The proprietary, the ones you buy off the shelf  
7 from these companies will have certain red flags built  
8 into them, based upon how that drug should be taken and  
9 used in the medical literature.

10:18:29 10 Then there's the ability to customize those  
11 packages to include that particular component that  
12 Mr. Lanier mentioned, or for the pharmacy to put in other  
13 red flags or other warning signs that they would want to  
14 alert their pharmacists to as well.

10:18:46 15 Q. So a pharmacy is able -- first of all, when they  
16 just get the standard DUR, the pharmacist is going to  
17 know, if they don't already, that Vicodin is a controlled  
18 substance?

19 A. Correct.

10:18:59 20 The purpose of a DUR program, as you can  
21 imagine, there's probably 50,000 drugs on the market.

22 There's no way any one person, a  
23 pharmacist, can memorize all those drugs, all the  
24 interactions, all the side effects.

10:19:13 25 This is a computer program that puts that

1 all in a searchable database and then gives the  
2 pharmacist back that information. And the pharmacist  
3 can't continue to fill that prescription until they  
4 actually override that alert.

10:19:29 5 So it reminds them, but then the pharmacist  
6 has to actively override one of these alerts because  
7 that's how important the DUR alerts are.

8 Q. All right. So the pharmacists can't accidentally  
9 just forget about a drug like an opiate?

10:19:48 10 Even the program itself is going to tell  
11 them, is that fair?

12 A. Yes, sir.

13 Q. All right.

14 Of course, then the question becomes what  
10:19:55 15 the pharmacist does with that.

16 A. Yes, sir.

17 Q. The next thing I want to do is talk about where  
18 these prescriptions came from before we look at them, and  
19 so we've got these companies, we've got CVS, we've got  
10:20:26 20 Walmart, we've got Walgreen's, and we've got Giant Eagle.

21 Each of them wrote prescriptions in Lake  
22 and Trumbull County.

23 Fair?

24 A. No, sir.

10:20:46 25 MR. DELINSKY: Objection, Your Honor.

1 MR. LANIER: I said it wrong. Sorry.

2 THE WITNESS: Dispensed.

3 MR. LANIER: Thank you. Thank you. I  
4 apologize. Totally my fault.

10:20:53 5 MR. DELINSKY: That's a big one, Mark.

6 MR. LANIER: I agree.

7 Thank you, Eric.

8 BY MR. LANIER:

9 Q. In Lake and Trumbull County, each of these  
10:21:01 10 pharmacies dispensed opiate prescriptions.

11 True?

12 A. Yes, sir.

13 Q. Now, these are counties of roughly 200,000 people  
14 each.

10:21:19 15 Is that anything you know or am I just  
16 asking you to assume it?

17 A. I -- it's my understanding and mostly assumption as  
18 well, sir.

19 Q. All right. So you've got counties of about 200,000  
10:21:31 20 people apiece.

21 These four pharmacies are the ones you  
22 focused on.

23 There is a funneling down -- you didn't  
24 look at every opioid prescription every one of these  
10:21:48 25 stores ever put out.

1 Did you?

2 A. No, sir.

3 Q. All right. I want to describe the funnel of how  
4 you got to those prescriptions that you examined. All  
10:22:01 5 right?

6 A. Yes, sir.

7 Q. And this is some of what Mr. Delinsky was  
8 referencing earlier as well.

9 Oh, Trumbull. Thank you, I can't spell.

10:22:13 10 First of all, you've got all of the opioid  
11 prescriptions they may have filled, so there's that  
12 universe, right?

13 A. Yes, sir.

14 Q. And I think the jury will meet probably next week  
10:22:38 15 the numbers guy, Dr. McCann, who runs all the numbers and  
16 computer programs and figures out all of the databases.

17 You're familiar with him because you've  
18 used and worked with him on some of your data, right?

19 A. Yes, sir.

10:22:52 20 Q. All right. So he, Dr. McCann, took your red flags  
21 and applied them to all of the opioid prescriptions, and  
22 applying your red flags, he came up with, applied Carmen  
23 Catizone red flags, and he comes up with a smaller set of  
24 prescriptions because not all of them had red flags.

10:23:28 25 Right?

1 A. Yes, sir.

2 Q. And I think the jury will hear from Dr. McCann that  
3 that's roughly 884,000 prescriptions that had the red  
4 flags.

10:23:40 5 Within the realm of that, the Court applied  
6 a random process to make sure nobody cherry picks, no  
7 cherry-picking, right?

8 And the Court produces ultimately 2,000  
9 prescriptions for each of these companies, right?

10:24:04 10 A. Yes, sir.

11 Q. Or roughly 2,000.

12 And that was based on the idea that there  
13 would be 200 prescriptions per year for a 10-year time  
14 span of each of these companies, right?

10:24:28 15 A. That's my understanding, sir.

16 Q. So out of this process, this funnel, comes  
17 200 -- by the way, where does Rx come in from?

18 A. It's from Latin, it means recipe.

19 Q. It means recipe?

10:24:50 20 A. Yes.

21 Q. All right.

22 MR. DELINSKY: Judge, excuse me, there's a  
23 lot of leading going on.

24 THE COURT: All right.

10:25:00 25 Mr. Lanier, if you can do a little less

1 leading.

2 MR. LANIER: Yes, sir.

3 I apologize. I'm trying to get the status  
4 of this.

10:25:12 5 BY MR. LANIER:

6 Q. All right. So 200 prescriptions for years of 2010  
7 all the way up through 2020.

8 Is that your understanding of what you did?

9 A. Yes, sir.

10:25:24 10 Q. And I think for some it may have been lesser  
11 numbers, but basically that gave you how many that you  
12 eyeballed?

13 A. Roughly 8,000 prescriptions, give or take a couple  
14 hundred.

10:25:39 15 Q. All right. So those 8,000 prescriptions, were all  
16 of them electronic?

17 A. All the files I received were electronic, either  
18 JPEG or pictures of the prescriptions or contained within  
19 a spreadsheet.

10:25:54 20 I did not receive any hard copy paper  
21 prescriptions, sir.

22 Q. But the JPEG, the pictures you got through e-mail  
23 or electronic, were there pictures of actual handwritten  
24 prescriptions in some cases?

10:26:10 25 A. Yes, sir.

1 The front and back and any information on  
2 the prescriptions.

3 Q. All right. Please tell the jury the process you  
4 used to go through those 8,000.

10:26:20 5 A. What I would do for each defendant is I would look  
6 at every single one of the electronic copies of those  
7 prescriptions.

8 So I reviewed about 2,000 individual  
9 prescriptions for each defendant.

10:26:35 10 Then what I would do is look at the  
11 spreadsheet that was prepared by Dr. McCann and go across  
12 all of the columns and identify the columns that I needed  
13 to look at that would contain any notes about that  
14 prescription that would explain where the red flags were,  
10:26:57 15 how the red flags were resolved, and whether or not that  
16 was documented within that record.

17 Q. So as I'm writing this down, I'm reducing your  
18 records and I want to make sure I've got it right.

19 Did you verify that each of those  
10:27:12 20 prescriptions had red flags, one or more?

21 A. Yes, I did, sir.

22 Q. And after you verified that each prescription had  
23 one or more red flags, is that when you began your  
24 process of determining whether or not they were  
10:27:27 25 documented as resolved?

1 A. Well, actually, sir, I went to every single  
2 prescription on the spreadsheet. And after I verified  
3 they had red flags, I physically went through every  
4 single line on the spreadsheet and looked at all the  
10:27:43 5 information on each of those lines.

6 Q. And what were you looking for?

7 A. I was looking for documentation of the red flag and  
8 resolution of the red flag.

9 Q. All right. Now, if a company has a well-trained  
10:28:17 10 pharmacist who has adequate time based upon your  
11 experience, does that pharmacist know that it's important  
12 to document the resolution of the red flags?

13 A. Yes. They should know, sir, yes.

14 Q. And should companies ensure that that policy's  
10:28:35 15 followed?

16 A. Yes, sir.

17 Q. Why?

18 A. If there's no accountability for that pharmacist to  
19 comply with the policies that the companies have set, and  
10:28:47 20 if those policies reflect what the legal requirements are  
21 and what the standards of practice are or what are  
22 problems that that company has identified that need to be  
23 addressed, and you have a pharmacist that's not paying  
24 attention or not complying, then there's no point of  
10:29:03 25 having that policy, there's no accountability for that

1 policy.

2 Q. So companies should ensure documentation on this?

3 A. Yes, sir.

4 Q. All right. Now, then let's start looking at the

10:29:22 5 prescriptions. And have you provided us some samples as

6 well as your overall assessment of these prescriptions

7 for each defendant in Lake and Trumbull Counties?

8 A. Yes, sir.

9 In my report I provided a few prescriptions

10:29:39 10 for each of the defendants.

11 Q. All right. Let's start, now, with CVS.

12 First of all, you've got this statement

13 that I've put at the top that says "CVS's relevant due

14 diligence comments fields."

10:30:07 15 Can you explain what you mean by CVS's

16 relevant due diligence comment fields?

17 A. So the spreadsheets that were provided to me had

18 multiple columns across an Excel spreadsheet.

19 As you see -- Mr. Lanier, can you lower the

10:30:25 20 paper somewhat, please, sir? There were a number of

21 columns that had these types of abbreviations. And so as

22 a pharmacist, I tried to figure out which one of those

23 would contain notes that pertained to that prescription,

24 that red flag, and how a red flag was resolved.

10:30:45 25 Part of the problem was I wasn't provided

1 information as to what those various things meant, so I  
2 used my judgment as a pharmacist.

3 If there were columns that I recognized  
4 that didn't have any relevant information to what I was  
10:31:00 5 looking for, then that's not a comment that I -- a field  
6 that I actually looked at.

7 Q. All right. So you looked at each -- by the way,  
8 did you understand the spreadsheet contained the  
9 information that would have been present in the various  
10:31:16 10 fields of the computer program?

11 A. Yes, sir.

12 Q. And in that regard, you've got this general  
13 information about CVS in your review of the Lake and  
14 Trumbull County pharmacies for CVS?

10:31:33 15 A. Yes, sir.

16 Q. You said, "950 of the prescriptions contained no  
17 information across all of these fields."

18 Can you explain what you mean?

19 A. So if you remember the top of the slide, you can  
10:31:52 20 see there were multiple columns there where there was an  
21 opportunity for the pharmacist to document the red flag  
22 that I verified was present with that prescription or the  
23 multiple red flags that were present with that  
24 prescription, with every prescription that I reviewed.

10:32:10 25 If we make the assumption that each

1 defendant provided 2,000 prescriptions, and 950 or a  
2 thousand of those prescriptions had no information, no  
3 relevant information across every single one of those  
4 columns for that prescription, that was a real red flag  
10:32:31 5 for me asking where was the documentation and what was  
6 the pharmacist doing or not doing when they dispensed  
7 these prescriptions.

8 Q. So that 950 that contains no information at all,  
9 that's out of the 2,000 that you looked at?

10:32:48 10 A. Yes, sir.

11 Roughly.

12 Each defendant had different numbers.

13 Q. We'll say plus or minus.

14 All right. Then you continue to say, "Of  
10:33:02 15 the 950 prescriptions with nothing in the relevant notes  
16 fields, 686 also had nothing documented on the hard copy  
17 prescription."

18 Explain what you mean.

19 A. So again as I mentioned, I looked at every one of  
10:33:22 20 the individual prescriptions, and if it had a notation on  
21 there that I thought relevant to red flags or resolution,  
22 I noted that prescription and I verified that with the  
23 spreadsheet.

24 This says that of the 2,000 prescriptions I  
10:33:38 25 looked at, 686 had nothing, no markings, on that

1 prescription that had any relation at all to the red  
2 flags or a resolution of them.

3 Q. All right. So if we do a funnel just for CVS, and  
4 you're talking about 2,000 random red flag prescriptions,  
10:33:59 5 out of those 2,000, you said 950 have no information?

6 A. In any of the fields, sir.

7 Q. And does that mean that the rest had some  
8 information?

9 A. Yes, sir.

10:34:17 10 Q. Of the ones that had some information --

11 MR. DELINSKY: Objection. Objection, Your  
12 Honor.

13 I think that last demonstrative was  
14 incorrect because there are notations on many of the  
10:34:32 15 prescriptions as well.

16 MR. LANIER: Which demonstrative, the  
17 funnel or this?

18 MR. DELINSKY: The funnel. The funnel.

19 BY MR. LANIER:

10:34:39 20 Q. Okay. Sir, let me see and make sure I've got this  
21 correct on the record and for His Honor.

22 This is a CVS funnel. You looked at 2,000  
23 opiate prescriptions for red flags?

24 A. The 950 should say no notes.

10:34:52 25 Q. Oh, no notes. Thank you very much.

1 No information in notes.

2 A. Correct. Across the note fields, sir.

3 Q. Across the note fields.

4 So it doesn't give you -- does it give you

10:35:06 5 any information about the red flags and how they were

6 dealt with?

7 A. Not within the fields on the spreadsheet, sir.

8 Q. All right. Now, are these prescriptions that were

9 filled, or are these prescriptions that were not filled?

10:35:23 10 A. My understanding, and in looking at the data, every

11 one of those prescriptions was dispensed.

12 Q. And then of the ones that had notes, did you read

13 the notes?

14 A. Yes, I did, sir.

10:35:35 15 Q. And in reading those notes, did you find that the

16 notes were acceptable?

17 A. In the overwhelming majority of cases, the answer

18 is no.

19 MR. DELINSKY: Objection.

10:35:50 20 I think the numbers are still off because

21 they don't account for Mr. Catizone's analysis of the

22 hard copy prescriptions.

23 THE COURT: Well --

24 MR. DELINSKY: That he identified the

10:36:02 25 prior --

1 THE COURT: He hasn't written anything  
2 about those.

3 MR. DELINSKY: Yes, they are in the prior  
4 demonstrative.

10:36:07 5 THE COURT: I thought the objection was to  
6 this one, so overruled on this one.

7 MR. LANIER: Thank you.

8 BY MR. LANIER:

9 Q. Sir, all we're trying to do is focus and make sure  
10:36:14 10 we understand what you're saying.

11 Are you saying that all of the 1,050 that  
12 did have notes were inadequate, or give us a feel for  
13 what was and was not, what was your experience reading  
14 through it based on your opinion?

10:36:28 15 A. My experience was that the overwhelming majority of  
16 those 1,050 notes approximately did not appropriately  
17 document the existence of red flags and the resolution of  
18 that red flag as required by standards of care and  
19 requirements.

10:36:45 20 Q. And did you bring us some examples of ones that did  
21 not appropriately document the existence and resolution  
22 of red flags?

23 A. Those are contained in a few examples -- are  
24 contained in my report, sir.

10:37:05 25 Q. All right. I've tried to run those out and

1 provided them ahead of time to counsel.

2 Let's look at them together.

3 Here is example or example of an instance  
4 where a red flag -- or red flags, and alarming  
10:37:30 5 situations, were identified but not resolved before  
6 filling.

7 MR. DELINSKY: Objection, Your Honor.

8 THE COURT: Well, overruled.

9 BY MR. LANIER:

10:37:39 10 Q. Would you please explain what you meant by CC  
11 number -- work through this.

12 Explain to us why you brought us this  
13 example.

14 A. Based upon my experience as a pharmacist, I try to  
10:37:50 15 interpret what this note said.

16 And yesterday we talked about the  
17 importance of that note being clear, so that anybody that  
18 came after that pharmacist would understand that note.

19 I struggled to understand it, so I will  
10:38:04 20 read it to the best of my understanding.

21 If I see CC number on file I think that  
22 means credit card number on file.

23 Q. All right.

24 A. It says "Use to pay." Again, no relevance to the  
10:38:22 25 red flag.

1 "Patient told me doesn't live in Florida,  
2 they just travel there to see this for pain med. Told  
3 need to see local pain management for all pain  
4 medications next time."

10:38:35 5 So if we look at red flags, you have a  
6 patient that travels from Ohio to Florida to be treated  
7 for pain where there's documentation that most of the  
8 pill-mills existed and were distributing pain  
9 medications, why would a person in Ohio not travel to a  
10:38:55 10 pain management specialist in Ohio, like Cleveland Clinic  
11 or some other?

12 Why are they traveling to Florida?

13 The pharmacist looks like they advised the  
14 patient that they have to see a local pain management  
10:39:08 15 specialist and said to the patient this will be the last  
16 time filling Oxycodone 15 and 30. So one of the red  
17 flags we talked about yesterday again is two short-acting  
18 opioids.

19 So now you've got a patient that has pretty  
10:39:26 20 much told the pharmacist I probably didn't get this for a  
21 legitimate purpose, I probably have some sort of  
22 addiction or abuse problem, and what the pharmacist does  
23 is dispense the prescription and says this is the last  
24 time we can do this until you get a local pain management  
10:39:42 25 doctor.

1                   This should have been treated a lot  
2 differently and the documentation and due diligence  
3 should have been recorded and probably this prescription  
4 should not have been filled.

10:39:52 5       Q.     You brought us another example for CVS that I'll  
6 show you right now where the note field begins, "This guy  
7 says."

8                   Would you read and explain this note to us,  
9 please.

10:40:09 10     A.     "This guy says is from Florida."

11       Q.     By the way, for HIPAA purposes and other things,  
12 you don't have these people's names; they've been blocked  
13 out, fair?

14       A.     Correct. Yes.

10:40:22 15     Q.     Okay.

16       A.     And that, "So and so is in the hospital in Ohio but  
17 so and so has filled narcotics in several different  
18 cities in Ohio and Indiana" and so the pharmacist put a  
19 note here that they would not fill out-of-state  
10:40:37 20     prescriptions.

21                   Again, a patient is pretty much saying to  
22 the pharmacist, "I'm doing something with these  
23 medications that I shouldn't be doing. I'm traveling to  
24 multiple cities to get opioids and get narcotics," so the  
10:40:53 25     pharmacist note to me says, "I'm not going to fill

1 anything from out of state, but if you travel to  
2 different cities in Ohio, I'll fill those prescriptions."

3 Q. And was this prescription, as you understand it,  
4 filled anyway even with this note?

10:41:09 5 A. Yes, sir.

6 Q. Do you believe that this was a proper handling of  
7 the red flags?

8 A. No, sir.

9 Q. Any doubt in your mind?

10:41:17 10 A. No, sir.

11 Q. Would you have filled that prescription?

12 A. No, sir.

13 Q. Next example from CVS's files.

14 Look at this first bullet point, it starts  
10:41:31 15 with "OARRS."

16 We've not had a chance to explain to the  
17 jury fully what OARRS is. Can you explain it briefly?  
18 We'll have another witness give it in more detail.

19 A. So every state has a program where any controlled  
10:41:47 20 substance that's prescribed by a doctor, that  
21 prescription when it's filled at the pharmacy is entered  
22 into a database. And every time as a patient you go and  
23 get a prescription filled, the doctor and pharmacy has  
24 access to that database to know what controlled  
10:42:05 25 substances you were prescribed and dispensed, when,

1 where, and how much of that you were to receive.

2 So OARRS is Ohio's Prescription Drug  
3 Monitoring Program.

4 Q. All right. So if I've got this right, OARRS is a  
10:42:23 5 database of filled controlled substances in Ohio?

6 A. Yes, sir.

7 And one point that goes to a red flag we  
8 talked about yesterday, most insurance companies do not  
9 have access to your prescription information when you pay  
10:42:38 10 cash.

11 That's why people pay cash for  
12 prescriptions, they don't want their insurance company to  
13 know about.

14 OARRS captures every single prescription,  
10:42:49 15 cash or no cash, and that's why when we see a red flag of  
16 a patient paying for cash, that's why it's a red alert  
17 and that's why pharmacists are advised to check OARRS and  
18 other databases to see what's happening with that  
19 patient.

10:43:03 20 Q. All right. And I'll use this again later, so but  
21 go to your note now or go to this prescription now that  
22 you have reviewed for the jury.

23 And work it through with us.

24 A. The OARRS, and what they say OARRS ran, OARRS  
10:43:23 25 provides to the pharmacist a listing of all the drugs

1 they receive, the pharmacies and the doctors. It's an  
2 electronic file that they can access.

3 And Ohio does participate in a national  
4 database, so they'll get information from all the other  
10:43:35 5 states where that patient has filled a controlled  
6 substance.

7 It lists the Rx number. I don't know what  
8 AMCE means. And then it says last time it was  
9 refilled -- filled, it was filled for the same drug at  
10:43:51 10 Walgreen's for the same day supply and quantity. "Watch  
11 for pharmacy shopping."

12 Getting a prescription for the same supply,  
13 the same drug on the same day, that's pharmacy shopping  
14 as we talked about it yesterday.

10:44:06 15 It says "Always check OARRS. Do not fill  
16 any controls."

17 But they dispensed this prescription as  
18 well.

19 Q. All right. I want to -- two things to clean up  
10:44:23 20 but, first, let me ask you: Would you have filled this  
21 prescription?

22 A. No.

23 Q. Why not?

24 A. Obvious red flags.

10:44:33 25 The patient's pharmacy shopping. There's

1 an issue with this medication. There's nothing to say  
2 how they resolved that prescription. Did they call the  
3 doctors and say this patient is seeing multiple -- is  
4 getting the prescription at multiple pharmacies? Did  
5 they call the other pharmacy?

10:44:46

6 There's nothing to document how they  
7 investigated this red flag and nothing to put a note in  
8 there for other pharmacists to say "Did not dispense,  
9 should not dispense," or there's a problem with this  
10 patient diverting or abusing this medication.

10:45:00

11 Q. All right. Two pieces to clean up before we go to  
12 the next slide.

13 You talked about how OARRS is a database  
14 that's got national information and all.

10:45:11

15 Has that changed over time and has OARRS  
16 changed over time?

17 A. All of the PDM programs have improved over times  
18 and the number of states participating in the national  
19 program have increased over time as well.

10:45:30

20 Q. All right. So what OARRS would or would not show  
21 depends on the year in which you were looking.

22 Fair?

23 A. Yes, sir.

24 Q. All right. Second piece of cleanup.

10:45:39

25 "Last prescription filled for same drug at

1 Walgreen's for same-day supply and quantity."

2 Does that mean it was filled on the same  
3 day, or for the same day supply?

4 A. The same day supply, sir.

10:45:55 5 So if the prescription was for 120 tablets,  
6 which would be a 30-day supply, there was 120 tablets at  
7 Walgreen's as well.

8 Q. Next example from CVS.

9 The one that starts, "Doctor shopping."

10:46:15 10 Can you read it and explain it to us,  
11 please?

12 A. It says, "Doctor shopping BWC versus insurance."

13 I would interpret that to say something  
14 about using cash instead of insurance, again one of the  
10:46:28 15 red flags we talked about yesterday.

16 Medicare Part D plan, so we have a patient  
17 that's old like me, 65, who's on Medicare. They have a  
18 drug benefit Part D that pays for pretty much most of the  
19 medications unless you fall within the one that has been  
10:46:50 20 resolved.

21 This person is paying cash. Again a red  
22 flag and something we've talked about.

23 Then it gives a comparison code and then it  
24 says, "Watch for fake CII," which means the pharmacist  
10:47:05 25 suspects that a prescription written for a Schedule II

1 controlled substance, which is the most addictive and  
2 abusive under heroin, that that may be a fake  
3 prescription. And again, this prescription was  
4 dispensed.

10:47:15 5 Q. Most of the opioids we're talking about in this  
6 case, OxyContin, Oxycodone, are they Schedule IIs?

7 A. Yes, sir.

8 MR. DELINSKY: Objection, Your Honor.

9 (Proceedings at side-bar:)

10:47:43 10 THE COURT: What's the objection?

11 What's the objection?

12 MR. DELINSKY: Just a simple objection,  
13 Your Honor.

14 Hydrocodone was a Schedule III controlled  
10:47:53 15 substance through most of 2014.

16 THE COURT: If he got it wrong, you can  
17 cross-examine him on it.

18 If he made a mistake, you can jump on it.  
19 So overruled.

10:48:07 20 (End of side-bar conference.)

21 BY MR. LANIER:

22 Q. Okay. Before the objection, I had asked you are  
23 most of the drugs we're talking about in this case,  
24 Oxycodone, Percocet, those types of drugs, are they  
10:48:31 25 Schedule II?

1 A. Yes, sir.

2 The Schedule II drugs are listed and  
3 mentioned in my report as well, sir.

4 Q. Now, what about Hydrocodone?

10:48:42 5 A. No, sir.

6 Q. When did it become a Schedule -- when was it  
7 shifted from Schedule III to Schedule II, if you know?

8 A. Probably about three years ago, sir.

9 Q. Time passes when you get older.

10:48:59 10 A. Quickly.

11 Q. 2014, does that refresh your memory?

12 A. Yes, sir.

13 Q. All right. That was just a few years ago.

14 Next example.

10:49:14 15 Would you please read us what you found on  
16 that, in those fields?

17 A. Yes. It says, "Watch, patient states that they did  
18 not authorize anyone to pick up their Soma on 6/25.

19 Spoke to Dr. Cayavec, no early refills. Has happened  
10:49:32 20 previously. OARRS ran, numerous CIIs, all different  
21 doctors and pharmacies."

22 Q. Okay. So are you able to, with some reasonable  
23 likelihood, tell us what this scenario is, based upon  
24 this note?

10:49:57 25 A. Yes.

1 Q. So tell us what this pharmacist was faced with  
2 before this pharmacist chose to dispense this  
3 prescription.

4 A. As a pharmacist, I'm seeing several red flags.

10:50:08 5 Soma, and I know the person is taking CIIs.

6 We spoke yesterday about the trinity and  
7 how some are muscle relaxers. As a pharmacist, I'm  
8 suspecting this person is getting the holy trinity and  
9 shouldn't be prescribed that.

10:50:26 10 I see it says numerous Schedule IIIs, all  
11 different doctors and pharmacies, so this prescription,  
12 at a minimum, probably has three to four red flags out of  
13 the 16 that I've identified as red flags.

14 MR. DELINSKY: Your Honor, these are two  
10:50:42 15 different notes for two different prescriptions.

16 I think something's being conflated.

17 MR. LANIER: They may very well be.

18 They're bullet points, Your Honor, and I  
19 pulled these out.

10:50:53 20 Let's deal with them individually.

21 THE COURT: Hold it. That's misleading.

22 If this is -- I'll sustain the objection.

23 MR. LANIER: Yeah. And I'll change the way  
24 that I'm asking it, too, because I did not understand  
10:51:07 25 that, Judge.

1 THE COURT: Remove this altogether.

2 It's confusing.

3 BY MR. LANIER:

4 Q. Well, my question would be let's just do the top  
10:51:15 5 one, the top bullet point, and I'll ask you about that  
6 prescription.

7 "Patient did not authorize anyone to pick  
8 up Soma. Spoke to Dr. Cayavec, no early refills, has  
9 happened previously."

10:51:34 10 That in itself, is that a red flag for  
11 opiate prescriptions that you have given these things on?

12 A. Though it doesn't mention they are opioids, the red  
13 flags here are that they are receiving a prescription for  
14 a muscle relaxer and there must have been an issue before  
10:51:52 15 where someone else, who was not authorized to pick up  
16 their prescriptions, picked up that patient's  
17 prescription and picked up one of the prescriptions that  
18 are usually part of that combination of drugs that  
19 creates that heroin effect.

10:52:05 20 Then in talking to the doctor, the doctor  
21 said, "No more early refills," which means this patient  
22 is coming in early more than once to get their  
23 prescriptions filled, and again, as we saw yesterday, if  
24 there was a problem with pain management, the medication  
10:52:21 25 wasn't working, that should be addressed.

1 If it was a question of abuse or diversion  
2 or something else, that also should have been addressed  
3 and documented further within this note.

4 Q. And another --

10:52:32 5 MR. DELINSKY: Your Honor, could we please  
6 go to a side-bar for a sec?

7 (Proceedings at side-bar:)

8 THE COURT: Okay.

9 MR. DELINSKY: Your Honor, yesterday,  
10:52:46 10 consistent with your *Daubert* ruling, you said that  
11 Mr. Catizone could not state categorically that any  
12 potential red flags were not resolved.

13 You said he could say he found no evidence  
14 of them, but not that he can say categorically they  
10:53:03 15 weren't resolved.

16 Yet the very title of the demonstrative  
17 Mr. Lanier is using --

18 MR. LANIER: Your Honor, Mr. Lanier here.

19 First of all, we gave these slides two days  
10:53:16 20 ago to the defendants and they raised certain objections  
21 but they never raised this objection.

22 I didn't see that. I'm glad to make that  
23 change.

24 I'll make that change and I'll clarify that  
10:53:27 25 for the jury.

1 THE COURT: Okay.

2 MR. LANIER: We're not looking for anything  
3 other than accuracy.

4 THE COURT: Okay. We'll make that  
10:53:32 5 correction.

6 MR. LANIER: Thank you.

7 (End of side-bar conference.)

8 BY MR. LANIER:

9 Q. Okay. What I want to do, first, is make a  
10:53:49 10 clarification on something because I want this to be as  
11 precise as it can be, please.

12 I have entitled this, "Examples of  
13 Instances Where Red Flags and Alarming Situations Were  
14 Identified But Not Resolved Before Filing," and actually  
10:54:07 15 I think I said filling, not filing.

16 And to be as accurate as we can, these are  
17 ones where a documentation of resolution is not there,  
18 right?

19 In other words, you don't know if maybe it  
10:54:23 20 was resolved; you just know it's not documented based on  
21 this documentation.

22 Is that right?

23 A. Yes, sir.

24 Q. Okay. And the same is true for the other notes  
10:54:33 25 that I've given you where we've talked about these.

1                   These are examples of instances where  
2                   alarming situations, red flags, were identified but not  
3                   documented as resolved.

4                   Fair?

10:54:46 5           A.       For all the prescriptions that I reviewed, sir,  
6           yes.

7           Q.       All right. And we're going to go back to a couple  
8           of those because they had the bullet points, and if  
9           they're separate prescriptions, we need to get that clear  
10:54:58 10          as well.

11                   So the second bullet point here is, "OARRS  
12           ran, numerous CIIs, all different meds and pharmacies."

13                   Does that adequately document resolution of  
14           red flags?

10:55:12 15          A.       No, sir.

16           Q.       If we go back to the previous note, which I was  
17           reading together, and separate it out as two bullet  
18           points, the first one, "Doctor shopping," either  
19           something with cash or maybe it's Workers' Comp., I don't  
10:55:31 20          know, but "versus insurance, Medicare Part D plan  
21           comparison code."

22                   Is that -- does that show a documentation  
23           of resolution that you, as a following pharmacist, would  
24           understand?

10:55:47 25          A.       No, sir.

1 And the bigger point to be made here is for  
2 adequate documentation, you would expect the prescription  
3 number or some other identifier so that we don't have the  
4 situation that just developed here where we don't know if  
10:56:02 5 it was for the same prescription or different  
6 prescriptions on the same occasion or different  
7 occasions.

8 That's what appropriate documentation does,  
9 identifies the prescription, identifies the day,  
10:56:12 10 identifies the time. All of that information should be  
11 clear so that anybody reading that note would be able to  
12 understand and make the determinations we're trying to  
13 make today.

14 Q. All right. Let's move on then from CVS and let's  
10:56:25 15 look at Walmart.

16 On the hard copies that you were given by  
17 picture as opposed to computer screen, a computer Excel  
18 spreadsheet, do you follow what I mean?

19 A. Yes, sir.

10:56:57 20 Q. Did you look at the front side and the back side?

21 A. If the back side was provided, I did, sir, yes.

22 Q. Okay. So did you look at the hard copies for any  
23 other notes that were made on those prescriptions on  
24 either side?

10:57:12 25 A. Yes, sir.

1 Q. Okay. And -- thank you.

2 All right. Now, if we move, then, to  
3 Walmart -- and I think that helps our numbers if we  
4 do -- this is what I pulled from your report.

10:57:30 5 "Only two out of the 1800 prescriptions  
6 contained no information across all relevant comment  
7 fields." Then you give those fields.

8 "Though the majority of the information  
9 contained in these comment fields would not qualify as  
10:57:50 10 adequate or even relevant due diligence."

11 Explain what you meant, and then we'll look  
12 at a couple of examples.

13 A. So again, I looked across all of the note fields,  
14 as I did for all of the defendants, to see if there was  
10:58:04 15 anything in those note fields where I thought a  
16 pharmacist would be able to make a note or where a DUR  
17 alert would show.

18 And for this particular pharmacy, of all  
19 the prescriptions I looked at, there were only two that  
10:58:21 20 were completely blank across all fields. But even within  
21 the note fields that were completed, again, most of those  
22 comments were not relevant to due diligence or to the red  
23 flags.

24 Q. Okay. I was supposed to ask you, did the hard copy  
10:58:39 25 notes reflect adequate due diligence for resolution?

1 A. No, sir.

2 Q. Okay. Thank you.

3 All right. So with Walmart, you explained  
4 that, and then you give further details about the Walmart  
10:58:56 5 prescriptions.

6 And I pulled this out of your report as  
7 well. Explain how out of the 1800 prescriptions, 1,639  
8 prescriptions contain no information in the MISC info  
9 field.

10:59:14 10 What did you mean by that?

11 A. So once I identified what the note fields were, I  
12 then looked at each one of those note fields to see  
13 whether or not there was anything relevant in those  
14 notes, and then ran an analysis like it shows.

10:59:29 15 So for the miscellaneous note field, of the  
16 1800 prescriptions that were provided, 1639 had no  
17 information in that miscellaneous field. That would mean  
18 about 200 or so prescriptions, fields, had some  
19 information but the other 16, 1700 had no information  
10:59:51 20 whatsoever.

21 Q. And what was the number that had no information in  
22 the prescription order detail comment fields?

23 A. Approximately 1400.

24 Q. And that's the prescription order detail comment  
11:00:05 25 field.

1                   How many contained no information in the  
2                   prescription comment field?

3           A.     19.

11:00:15

4           Q.     And how many, no information in the patient comment  
5                   field?

6           A.     Three hundred.

7           Q.     All right. Now, we have some examples.

11:00:26

8                   Your Honor, I'll be a lot more careful with  
9                   this one. I think this one doesn't have bullet points  
10                   because each one is on a separate sheet, except for the  
11                   first one. And the first one actually took two sheets to  
12                   make.

11:00:46

13                   So, sir, your first comment is on Slide 50  
14                   and 51, and I put, because I couldn't fit it all onto one  
15                   slide, I put three dots.

16                   THE COURT: The heading is still  
17                   problematic.

18                   MR. LANIER: Oh, yes, I need to -- "But not  
19                   documented."

11:00:56

20                   Thank you, Judge. Before filling.

21           BY MR. LANIER:

22           Q.     So from this, you see the three dots at the end,  
23                   that's because this prescription or this note continues  
24                   onto the next page.

11:01:12

25                   So let's read this as one, if we can, but

1 I'd like you to explain it as we go along, please.

2 A. Sure. So a note that would be very useful when  
3 they are saying Valium dosing change was three times a  
4 day, it's now twice a day, so the doctor cut that.

11:01:34 5 That's important for the pharmacist to know.

6 No early refills. Something going on with  
7 the medication is perhaps why the doctor cut him from  
8 three times a day to two times a day.

9 No excuses. And then the next part is very  
11:01:49 10 confusing, "Stolen meds 3/13/16." The patient must have  
11 shown a police report, so either documenting that that  
12 was stolen or not, and then the pharmacist ran an OARRS  
13 report on February 1st, 2017, and it said, "Do not fill,"  
14 I'm not sure what KFK is, if that's the doctor or who  
11:02:08 15 that is, "do not fill until 1/19/16."

16 So I'm a bit confused here. They had  
17 stolen meds on March 13th. The OARRS report was run on  
18 the 17th -- 2017, but it says, "Do not fill until  
19 1/9/2016." And then it says, "KB Insurance, date of  
11:02:32 20 birth was changed" from whatever the date of birth was.  
21 Now it says the patient name was changed, older name and  
22 now a new one.

23 So red flags. If you see a patient come  
24 into your pharmacy and they have a police report, that's  
11:02:44 25 pretty concerning and would require more explanation and

1 I would show the police report, who stole the meds, what  
2 happened.

3 A lot of questions with this, with this  
4 note.

11:02:55 5 Q. Is it unusual to have a patient change their name?

6 I guess maybe marriage or something.

7 A. It's not unusual.

8 Q. And then the same note continues.

9 THE COURT: And we need to change the  
11:03:10 10 heading again.

11 BY MR. LANIER:

12 Q. All right. Let's -- I want to go to the next one  
13 that we've got.

14 The next one that we got again, this is one  
11:03:26 15 that's not documented as resolved.

16 Can you tell us why you singled this one  
17 out? Walk through it with us, please.

18 A. So it says, "5/16 MJM OARRS," which means I think  
19 they ran an OARRS report.

11:03:47 20 "December 29th, 2014, RMK recheck, would  
21 not fill. Watch March 15th, LAM, recheck Percocet 5, May  
22 16th, MJM insurance, date of birth changed."

23 So it looks as if this is the pharmacist,  
24 the pharmacist, one of the pharmacists decided not to  
11:04:12 25 fill the prescription so they must have had a really good

1 reason not to fill that prescription and document that,  
2 but there's no documentation as to why that prescription  
3 was refused to be filled.

4 And now the pharmacist is trying to figure  
11:04:26 5 out what that reason was, what was going on and goes  
6 ahead and dispenses the prescription anyway.

7 Q. All right. And this -- thank you.

8 And now, I've got the sheet on the one that  
9 had the three dots.

11:04:41 10 So you walked through this name change,  
11 showed police report, let's finish the note that was  
12 given, three dots.

13 It continues to say, "Percocet 10 and Soma  
14 350 last filled."

11:05:02 15 Do you see that?

16 A. Yes, sir.

17 Q. Walk through the rest of that for me, please.

18 MS. FUMERTON: Your Honor, objection. The  
19 slide is still misleading.

11:05:11 20 THE COURT: You have to change the heading.

21 MR. LANIER: Yes. Thank you.

22 A. So again, there's that reference to the February  
23 1st, 2017. "No more early refills. Calling  
24 Dr. Jurenovich this week to let him know about all early  
11:05:34 25 refills and excuses. Vacation, theft, et cetera.

1 Percocet 10 on May 18th, red Percocet 10 on May 17th, MJM  
2 counseling patient on Percocet 10/325. On 9/12/2016, DJ  
3 Percocet and Soma both filled early. April 3rd due to  
4 theft/police report/override from insurance."

11:06:03 5 So with any red flag itself there's a story  
6 here about this patient lying about making excuses -- I  
7 won't say lying. Excuse me.

8 Vacation, left, to get early refills.

9 A prescription note here saying no more  
11:06:19 10 early refills, but yet this prescription was dispensed  
11 and you have the combination again of the Percocet and  
12 the Soma. That's a combination that again is another red  
13 flag.

14 I can't interpret why that prescription,  
11:06:35 15 what was dispensed, and if any of those red flags were  
16 actually resolved.

17 Q. All right. And I'm taking the titles out. I think  
18 it will be cleaner for the record and everybody else. So  
19 I'm just going to the next Walmart pharmacy note and then  
11:06:48 20 we're going to shift to Walgreen's.

21 The next note. "Watch big time!!  
22 Insurance, date of birth changed from something to  
23 something else. Patient merge correct patient redacted  
24 incorrect patient."

11:07:08 25 Why are these red flags or, better yet, why

1 does this not seem adequate documentation of red flag  
2 resolution?

3 A. So as an explanation to the jury, when I mentioned  
4 earlier that I looked at all the note fields, and much of  
11:07:26 5 the information in the note fields were not relevant to  
6 the red flags, this is an example of information that was  
7 in the note fields.

8 It had to do with change of names or date  
9 of birth or insurance; nothing to resolve the red flag.

11:07:43 10 I don't know what the top means when it  
11 says watch big time. That's usually an indication that  
12 there's something going on here with that prescription,  
13 that patient.

14 Unless the patient is somebody famous, I  
11:07:58 15 don't know why you would put, "Watch big time," unless  
16 you suspect something's happening.

17 Q. All right. Now, let's shift at this point in time,  
18 please, from Walmart to Walgreen's.

19 And do you want me to say the thing about  
11:08:13 20 handwritten notes again?

21 So my astute elder co-counsel notes that  
22 you had said earlier of the 1800-sample prescriptions for  
23 Walmart, a number of them contained information in  
24 certain fields that may or may not have been helpful.

11:08:59 25 Is this an example of that?

1 A. Yes, sir.

2 Q. All right. And did you see, for all of the  
3 companies, any handwritten notes that you -- handwritten  
4 prescriptions where you saw the pictures, did you look at  
11:09:17 5 the front and the back when provided?

6 A. I looked at the front and the back and did not see  
7 adequate documentation of the red flags or resolution of  
8 red flags on any of the hard copies, front or back, sir.

9 Q. Thank you, sir.

11:09:28 10 Now, let's do Walgreen's and Giant Eagle  
11 and then I'll ask a few wrap-up questions and I'll be  
12 done.

13 Walgreen's. This seems to be your general  
14 assessment of Walgreen's.

11:09:42 15 "Of the 2,000 prescriptions totals," why  
16 don't you read it instead of me and explain it as you go  
17 along.

18 A. Sure.

19 It says "160 prescriptions contain some  
11:09:54 20 writing in the DUR comment field regardless of the DUR  
21 alert."

22 So even if that pharmacist received a DUR  
23 alert saying this was a problem, only 160 of those  
24 fields, of those prescriptions, actually had a comment to  
11:10:09 25 respond to that DUR alert.

1 Q. Is that a good thing or a bad thing?

2 A. The DUR alert pops up just for the obvious reason,  
3 it's an alert. There's a problem with this prescription,  
4 there's a problem with this medication that should be  
11:10:22 5 resolved or should be addressed.

6 "Some DUR alerts include a popup in the  
7 Walgreen software" which means the pharmacist gets a  
8 popup on their screen to emphasize that this is a DUR  
9 alert, that this has to be resolved or the pharmacist has  
11:10:40 10 to address this DUR.

11 "This notifies the pharmacist they need to  
12 take an extra look at the prescription."

13 For the 160 prescriptions that did have a  
14 DUR comment, the comments were often just pharmacist  
11:10:51 15 initials, notes about reviewing patient history, general  
16 patient consult, and speaking to doctor.

17 So now I've got an alert that's significant  
18 enough that the pharmacist determined it should pop up on  
19 my screen. So I have to take another look and all I do  
11:11:11 20 in my documentation is put in my initials CC.

21 The next time that pharmacist fills that  
22 prescription, that alert is going to come up again and  
23 I'm going to check the patient notes and I'm going to see  
24 CC; not adequate documentation.

11:11:28 25 Q. You continued to say, "These comments fail to

1 identify any of the specific red flags and fail to  
2 disclose that the red flag was resolved."

3 What did you mean by that?

4 A. So again, the example, Mr. Lanier, every one of the  
11:11:47 5 prescriptions I looked at had at least one red flag.

6 Some of them had multiple red flags and  
7 some of the red flags we just talked about, significant  
8 red flags.

9 Nothing in these notes addressed the red  
11:12:01 10 flags. Didn't address the DUR alerts, didn't address the  
11 red flag.

12 Q. All right. And you brought us some examples from  
13 the Walgreen's ones.

14 Oh, wait. First I should add, you said  
11:12:16 15 Walgreen's relevant notes fields, 1,237 were blank across  
16 all these comment fields, representing 61 percent of the  
17 sample.

18 What did you mean by that and why is it  
19 important?

11:12:31 20 A. Again, as with the other defendants I looked at all  
21 the note fields, and if the comments weren't relevant,  
22 like some you just saw, date of birth change, patient  
23 name change, those comments, even though they were in the  
24 field weren't relevant and that's why the 61 percent came  
11:12:46 25 about.

1                   When I total up all those fields that had  
2                   any relevant comments at all, the 61 percent had nothing  
3                   whatsoever.

4                   Q.     And then you say, "Of the 1,237 prescriptions that  
11:12:59 5                   were blank across all relevant comment fields, there were  
6                   940 prescriptions that also had nothing written on the  
7                   hard copy prescription, representing 47 percent of the  
8                   sample."

9                   Explain that, please.

11:13:13 10                  A.     Sure.

11                   When I looked at the hard copies, there  
12                   were notations on the hard copy, and of some of the  
13                   prescriptions as it indicates here.

14                   Some of those notations were patient  
11:13:24 15                   waiting for prescription or some of them were the time  
16                   that the patient dropped them off so that the pharmacist  
17                   could keep track of when that patient dropped it off and  
18                   when it was filled.

19                   Others may have been pharmacist initials.  
11:13:38 20                   Others may have been check with M.D. There wasn't any  
21                   relevant notes regarding red flags and the resolution of  
22                   red flags on any of those hard copies that I reviewed.

23                   Q.     All right. Now, within the framework of this,  
24                   you've given us a number of notes as examples.

11:13:59 25                   I'd like to look at those with you and have

1 you explain them.

2 The first one is one of these that is  
3 rather lengthy, and so it goes on to two sheets as  
4 evidenced by the dot, dot, dot that I added and the dot,  
11:14:16 5 dot, dot that continues.

6 It's long, it's drawn out, but would you  
7 please take your time to read it to us and explain it to  
8 us.

9 A. So this note said, "Abuse/dependency potential.  
11:14:32 10 Duplication. The allowance. Zero," which means it  
11 shouldn't -- there shouldn't be an allowance, there  
12 shouldn't be any dispensing.

13 "Oxycodone/Acetaminophen, 7.5-325 milligram  
14 tablet and Tramadol 50 milligram tablets" are members of  
11:14:54 15 the short-acting narcotic analgesics class and may  
16 represent duplicate therapy. "No DUR info returned from  
17 plans. No DUR info returned from plan 004 prescriptions  
18 last 90 days, 120 days of Oxycodone/Acetaminophen in  
19 previous prescriptions for this generic entities may  
11:15:20 20 exceed the recommended adult duration of one to 30 days."

21 I'll stop here. As we mentioned earlier,  
22 about the DUR alerts that come from these private  
23 companies that put this together and some of those alerts  
24 address abuse of medications and the therapy of  
11:15:35 25 medications, this looks like it's one of those alerts,

1 not something that the pharmacist typed in, but one of  
2 those predetermined alerts based upon the medical  
3 literature that's saying these two medications should not  
4 be prescribed together, it's exceeding what the normal  
11:15:53 5 course of therapy is and the allowance is zero.

6 The rest of the note, please, Mr. Lanier.

7 Q. Yes, sir.

8 A. And it's detailing that, "From the plan for the  
9 last 90 days, they had Oxycodone/Acetaminophen with  
11:16:13 10 Warfarin sodium. Delayed severity. Moderate  
11 documentation probable."

12 That's just saying the impact of the  
13 Oxycodone on the Warfarin, that blood thinner, is  
14 moderate. So, it's more than just a passing.

11:16:28 15 "Hypoprothrombinemic effects of Warfarin  
16 sodium five milligram may be increased by  
17 Oxycodone/Acetaminophen in a dose dependent manner.  
18 Bleeding may occur, especially when the  
19 Oxycodone/Acetaminophen 7.5-325 milligram tablet use  
11:16:49 20 exceeds 2,000 milligrams daily or prolonged for several  
21 days."

22 Q. All right. So this long extended note, where at  
23 any point in time does it document resolving the red flag  
24 or red flags that were triggered under the red flag  
11:17:08 25 analysis?

1 A. For this prescription, there was no information to  
2 do that, sir.

3 Q. All right. If you're running a pharmacy business  
4 and these are the number of notes that you get that  
11:17:22 5 aren't relevant and aren't documenting resolving red  
6 flags, is that a problem?

7 A. Yes, sir.

8 Q. Why?

9 A. So if I'm running a business and this is the  
11:17:32 10 information that a corporate entity would have and not  
11 the individual pharmacy, if I see my pharmacist  
12 dispensing medications they shouldn't be dispensing, this  
13 medication, because it's going to harm the patient, from  
14 a business perspective, I'm probably going to get sued by  
11:17:46 15 that patient when they get injured.

16 From a patient care safety comply with  
17 regulations, if I see abuse in other things and my  
18 pharmacists are dispensing those medications, there's a  
19 problem with that pharmacist or with the tools they're  
11:17:59 20 getting. I need to take action.

21 If I don't take action, it's going to  
22 continue to happen.

23 Q. Did you look at the Walgreen's good faith  
24 dispensing policies?

11:18:08 25 A. Yes, sir.

1 Q. What did you learn?

2 A. That they have a good faith dispensing policy.

3 Q. Is this adequate due diligence that we're seeing?

4 A. Not on that note, sir, and not on the prescriptions

11:18:26 5 I reviewed.

6 Q. And you reviewed a totally random selection of  
7 2,000 Walgreen's opiate prescriptions that were filled  
8 that had red flags, fair?

9 A. Yes, sir.

11:18:35 10 Q. All right. Here's neither example from Walgreen's  
11 and I'm cutting this shorter out of time.

12 But you said -- well, why don't you read  
13 it?

14 A. "508 days of Oxycodone Acetaminophen 5-325 and  
11:18:50 15 previous prescriptions for this generic entities may  
16 exceed the recommended adult duration of one to 30 days,  
17 no DUR info returned from plan, prescription last 90  
18 days."

19 Again, we talked DURs, you should be on  
11:19:04 20 opioids for short-term. The DUR is one to 30 units. 508  
21 days, that's a year -- more than a year supply of  
22 Oxycodone. It's very difficult for a person not to  
23 become addicted after they take this medication for over  
24 a year.

11:19:16 25 Q. Do you see any evidence here that gave you

1 assurance in this note that this red flag was resolved?

2 A. No, sir.

3 Q. Next, Giant Eagle.

4 MR. WEINBERGER: Wait a minute.

11:19:42 5 MR. LANIER: Oh.

6 BY MR. LANIER:

7 Q. You said that you looked at the Walgreen's good  
8 faith dispensing checklist.

9 Is that right?

11:20:26 10 A. Yes, sir.

11 Q. Let's make a note on this and make sure we've got  
12 it right.

13 Did you actually review the Walgreen's  
14 checklist?

11:20:35 15 A. Yes, sir.

16 Q. Did the target drug good faith dispensing checklist  
17 also get reviewed?

18 A. Yes, sir.

19 Q. And when you reviewed that Target drug good faith  
11:21:06 20 dispensing checklist, did those forms reflect adequate  
21 due diligence for these prescriptions?

22 A. No, sir.

23 Q. Why not?

24 A. When I've looked at the checklist and the  
11:21:21 25 information there, my opinion of the majority of the

1 checklists were that they were just filled out in a  
2 perfunctory manner, simply check the boxes, and that  
3 there was information that should have been included or  
4 provided that wasn't.

11:21:37 5 And also under Walgreen's policy, the  
6 prescriptions that actually required a good faith  
7 dispensing document, many of the prescriptions that were  
8 dispensed did not have that form completed.

9 And then when I also looked at the OARRS  
11:21:56 10 report for some of those prescriptions that included the  
11 OARRS report with the good faith dispensing, I found  
12 additional red flags that weren't even tagged by the  
13 analysis conducted by Dr. McCann, and again, none of  
14 those red flags were addressed or documented.

11:22:13 15 Simply said on the good faith dispensing,  
16 "Checked OARRS" and that was the documentation that  
17 existed.

18 Q. All right.

19 The good faith dispensing checklist was a  
11:22:25 20 set of boxes that had to be checked off for Target drugs  
21 that were being dispensed?

22 Is that right?

23 A. Yes, sir.

24 Q. And give the jury a sample of what those boxes were  
11:22:36 25 in the checklist.

1 A. The first box asked about the patient, whether or  
2 not the patient was known to the pharmacist or whether or  
3 not the pharmacist actually checked a Government ID for  
4 the patient.

11:22:49 5 That would cite the information, that  
6 helps, the information about the prescriber, whether or  
7 not the doctor, they checked to make sure that the doctor  
8 was licensed and then whether or not the patient ever  
9 received the medication before and what the medication  
11:23:05 10 was. Those were some of the questions.

11 Q. And when you say that these were mostly or by and  
12 large just done perfunctorily, what do you mean by that?

13 A. Again, the boxes were just checked. I didn't see  
14 any information to explain why they were just checked to  
11:23:28 15 identify the red flag or resolve the red flag.

16 Q. And then you gave us one example where it said  
17 check OARRS or something or you went and checked OARRS?

18 Explain that.

19 A. No, included with some of the good faith dispensing  
11:23:41 20 documents was an actual copy of the OARRS report because  
21 one of the boxes also said "Check OARRS" as one of the  
22 things that the pharmacist would do.

23 I'm not remembering exactly what that form  
24 said. Just generally.

11:23:55 25 MR. SWANSON: Your Honor, Your Honor, may

1 we be heard on this, please?

2 (Proceedings at side-bar:)

3 THE COURT: All right.

4 MR. SWANSON: Your Honor, these opinions

11:24:08 5 about checking OARRS and comparing them to the good

6 faith, Target drug good faith checklist are not disclosed

7 anywhere in his report.

8 He hasn't disclosed these opinions that

9 he's now giving.

11:24:21 10 MR. WEINBERGER: Your Honor, he's

11 reflecting one specific script that had a target good

12 faith, target drug good faith dispensing checklist and

13 had apparently a note about checking OARRS.

14 This isn't across the board. This is one

11:24:41 15 script that he's describing.

16 MR. SWANSON: And if he disclosed it,

17 Mr. Weinberger, could show us what it was and what his

18 opinion was but he hasn't done that so it's improper.

19 MR. LANIER: I'll move on, Judge.

11:24:56 20 THE COURT: Well, if this wasn't in the

21 report at all as to work that he did, I would agree.

22 MR. WEINBERGER: Well, Your Honor, he -- in

23 his report and in his deposition, he testified that

24 the -- from his review of these checklists, there

11:25:16 25 was -- these checklists did not represent

1 inadequate -- or did not represent adequate due  
2 diligence.

3 THE COURT: I'll let him -- he can say --

4 MR. WEINBERGER: But --

11:25:26 5 THE COURT: He can say I looked at the  
6 Walgreen's checklist and this is what the checklist was  
7 supposed to do and I looked at, you know -- I didn't see  
8 any evidence of this being done on these notes.

9 MR. SWANSON: Your Honor, my concern is  
11:25:42 10 that he's identifying additional red flags.

11 THE COURT: I know. It sounded like he  
12 was --

13 MR. LANIER: I'm going to move on, Your  
14 Honor. I'm going to move on.

11:25:49 15 THE COURT: He's going into something,  
16 something -- some additional work that he did after his  
17 report, and that's a concern.

18 MR. SWANSON: Correct.

19 I apologize but I move to strike that  
11:26:01 20 answer, Your Honor, please.

21 MR. WEINBERGER: Your Honor, I don't think  
22 that answer has to be stricken.

23 Every single detail of what he did with  
24 respect to these scripts is not disclosed.

11:26:14 25 They had --

1 THE COURT: No. No.

2 We're not striking all of that.

3 It was the last -- the last question that

4 asked him about some additional, additional work that he

11:26:27 5 did, so I'll --

6 MR. WEINBERGER: Your Honor, he --

7 THE COURT: All right. I'm going to --

8 MR. WEINBERGER: Okay.

9 THE COURT: -- direct the jury to disregard

11:26:35 10 the last question and answer.

11 MR. WEINBERGER: Okay.

12 MR. SWANSON: Thank you, Your Honor.

13 (End of side-bar conference.)

14 THE COURT: All right. I'm going to direct

11:26:43 15 the jury to disregard the very last question to this

16 witness and the very last answer.

17 BY MR. LANIER:

18 Q. All right. Mr. Catizone, so you have had an

19 opportunity to look and did the way the Walgreen's good

11:27:06 20 faith, target drug good faith dispensing checklist was

21 executed many of the times, was it adequate?

22 A. It did not meet the documentation requirements.

23 Q. Okay. In other words, this -- okay. Got it.

24 Now, let's move on to Giant Eagle, please.

11:27:38 25 Giant Eagle, again, about 2,000 notes you

1 looked at?

2 A. Yes, sir.

3 Q. All right. You told everybody in your report that  
4 1,094 of those prescriptions had no notes documented  
11:27:54 5 across any of the relevant note fields, representing 54  
6 percent of the sample.

7 Is that right?

8 A. Yes, sir.

9 Q. Is that acceptable?

11:28:05 10 Is that an acceptable documentation of red  
11 flags, to have no notes across any of the relevant  
12 fields?

13 A. Again, the conclusion I reached was that the  
14 majority of prescriptions didn't have adequate  
11:28:16 15 documentation, and this is just a further example or  
16 further support for that.

17 Q. 782 of the prescriptions did not contain any  
18 information in the notes fields and did not contain any  
19 handwritten documentation on the hard copy script,  
11:28:33 20 representing 39 percent of the total sample.

21 Is that a good practice of a good policy to  
22 ensure documenting red flags?

23 A. No, sir.

24 Considering every prescription had at least  
11:28:49 25 one red flag, the absence of the documentation is not

1 adequate.

2 Q. And then you give us some Giant Eagle examples as  
3 well, and I'd like to look at those.

4 Let's start with this first one, 2/5/12,  
11:29:07 5 patient getting Percocet prescriptions.

6 Can you read and explain that to us and why  
7 it's inadequate documentation in your mind?

8 A. Sure.

9 "From Dr. Ricotti and filling them at

11:29:19 10 Franklin Pharmacy, patient getting Vicodin ES  
11 prescriptions and filling them here. Does Dr. Goodwin  
12 know this? Does Dr. Ricotti know this? Per OARRS,  
13 checked February 5th, 2012, pharmacist doctors to be  
14 contacted on February 6th. Do not fill any controlled  
11:29:43 15 substances until calls are made and both doctors approve  
16 and we document this in patient notes."

17 Questions being asked and should be asked,  
18 does one doctor know the other doctor is prescribing  
19 these medications.

11:29:55 20 Q. Okay. Time out. I do need to warn you the  
21 ellipsis, I haven't given you the whole note yet.

22 A. Okay.

23 Q. Because your note you gave in your report wouldn't  
24 fit on one slide, so I did my ellipsis there.

11:30:08 25 Do you see that?

1 A. Yes, sir.

2 Q. Okay. Do you want to comment on it up until this  
3 point and then we'll look at the rest, or you want to  
4 look at the rest now?

11:30:15 5 A. The only comment I'll make before the ellipsis is,  
6 "Do not fill any controlled substances until calls are  
7 made and both doctors approve."

8 Q. Okay.

9 Now, Mr. Stoffelmayr for -- the Walgreen's  
11:30:27 10 attorney in opening statement showed a picture of the  
11 Franklin Pharmacy and talked about it being a notorious  
12 pharmacy for dispensing opiates.

13 Would you expect, in a community of, a  
14 county of 200,000 people, that pharmacists will know  
11:30:47 15 which other pharmacies, about their competition?

16 A. Generally, the pharmacists would know about the  
17 other pharmacies, sir, yes.

18 Q. If you believed that someone's getting a  
19 prescription filled at a pharmacy that you believe may be  
11:31:03 20 loose in the way it dispenses opioids, would that affect  
21 you if you find out that the same patient is getting  
22 other opioids filled with you?

23 A. Yes, sir.

24 Q. All right. Let's continue with the rest of this  
11:31:22 25 note.

1 It says, "Do not fill any controlled  
2 substances until calls are made and both doctors approve  
3 and we document this in patient notes?"

4 A. So then the pharmacist puts in there that, "On the  
11:31:33 5 7th of February, per Dr. Goodwin, cancel the Vicodin ES  
6 prescription. Do not fill until Dr. Goodwin's office  
7 calls back and okays this fill. Doctor was not aware  
8 patient receiving Percocet prescription from Dr. Ricotti.  
9 OARRS reviewed. Check OARRS 5/8, okay, continue to write  
11:31:52 10 for it. Only one doctor can write for it, Endocet, or we  
11 will not fill any more. We did contact both doctors, but  
12 they still continue to write for them."

13 Q. Okay. Now, explain to us then the total picture  
14 here.

11:32:09 15 Why is this a significant note you brought  
16 to our attention?

17 A. The pharmacist identified that there's a problem  
18 with prescription red flags, patient getting two  
19 prescriptions, two different from two different doctors,  
11:32:23 20 two different pharmacies.

21 In calling the doctor, the one doctor says,  
22 "Don't write, don't fill that prescription anymore,"  
23 which means the doctor has cut off that patient.

24 Now, the other doctor is saying continue to  
11:32:36 25 fill it but we know you have a problem with that patient.

1 And then it says have contacted both  
2 doctors and they still continue to write for him.

3 To me it appears to be an issue now with  
4 the prescriber or prescribers, and the pharmacist has to  
11:32:48 5 do some additional due diligence and then document that  
6 to make sure the doctors are issuing legitimate medical  
7 prescriptions for legitimate medical purposes.

8 Q. And from your perspective and expertise, if a  
9 pharmacy determines that a doctor is a problem in himself  
11:33:08 10 or herself, is there a responsibility that you believe  
11 exists, not under the law, but from your experience to  
12 put a notice out on filling those doctors?

13 MS. SULLIVAN: Objection.

14 THE COURT: Sustained.

11:33:24 15 Q. Okay. What do you do if you've got a doctor that  
16 you think might be writing prescriptions pell-mell if  
17 you're doing responsible practice as a pharmacist and a  
18 pharmacy?

19 A. As a pharmacist, if I thoroughly resolved that  
11:33:39 20 issue and determined that the doctor is not issuing  
21 controlled substance or opioids for legitimate purpose,  
22 then I instruct the pharmacies -- pharmacists I work with  
23 in the notes for that doctor to say do not dispense  
24 controlled substances for this doctor.

11:33:57 25 Q. And if it's been suggested that -- strike that.

1 That's not appropriate.

2 All right. Next note. "Asterisk,  
3 asterisk, only, redacted, can pick up, redacted,  
4 medications." And then it's got this note, Giant Eagle  
11:34:18 5 note.

6 Can you read it for us, please?

7 A. "No more filling under discount cards, no matter  
8 what. Patient is getting controls early through cards."

9 Q. What does that tell you?

11:34:28 10 A. The first part says that maybe somebody else picked  
11 up the medication for them or there's a reason why only  
12 so and so can pick up the medication.

13 The second is they're using the discount  
14 cards like cash.

11:34:39 15 As I mentioned yesterday, when you have  
16 prescriptions filled under insurance, the insurance will  
17 reject early refills and not pay for them, and the  
18 pharmacy says you have to pay for this out of your  
19 pocket, the insurance company will not pay for it.

11:34:54 20 In this case, the patient was using those  
21 discount cards to avoid paying by insurance and they were  
22 using it to get early refills.

23 Again, a number of red flags within this  
24 prescription and no documentation of how it was resolved  
11:35:05 25 and the prescription was still dispensed.

1 Q. Okay. Next example from Giant Eagle.

2 "Absolutely no early fills, no earlier than  
3 three days, on controls. Patient has been told several  
4 times. No exceptions, even if patient says going out of  
11:35:27 5 town."

6 What -- why is this note informative to  
7 you?

8 A. This is probably one of those patients I would ask  
9 the other pharmacists to fill whenever they came in.

11:35:38 10 But we talked yesterday about early refills  
11 and my red flag was five days.

12 That's just a measure or a guide to the  
13 pharmacist. It could be three days. Just as you see  
14 here. It could be seven days.

11:35:53 15 There's the discretion of the pharmacist to  
16 utilize it. The red flag just says this could be an  
17 issue.

18 They've determined that this patient has  
19 been getting early refills and they can't refill it  
11:36:04 20 mainly because of how much the patient is getting or how  
21 strong that medication is no more than three days early  
22 because if they do something three days early, it's going  
23 to create some sort of problem for the patient.

24 But again, it's a red flag. There's no  
11:36:16 25 mention of calling the doctor, and this prescription was

1 dispensed.

2 Q. And the last one that we'll look at, at least in  
3 your direct, is this one, "Directions for Percocet."

4 This Giant Eagle note on a prescription  
11:36:35 5 that they went ahead and filled, would you please tell us  
6 why this note is important?

7 A. Yeah, directions for Percocet should read two  
8 tablets every six hours. I'm not sure what PPA is, maybe  
9 for pain as needed.

11:36:49 10 "If not call the nurse and run OARRS.

11 Patient wants 250 Percodans a month and complains the  
12 nurse will not okay this prescription. Call the number  
13 on the script pad for clinic, not the number provided by  
14 the patient."

11:37:05 15 So you've got a medical professional saying  
16 I'm not going to authorize refills. The patient wants  
17 250 Percodan a month, a significant dose like we talked  
18 yesterday about MMEs, the Morphine Milligram Equivalents,  
19 and then it says call the number on the script because  
11:37:21 20 the patient has given them a number to call that could be  
21 their friend who's authorizing these prescriptions, it  
22 could be a practitioner that's involved in some sort of  
23 illicit activity.

24 Again, a red flag. Numerous red flags. No  
11:37:35 25 documentation, and the prescription was dispensed.

1 Q. Sir, if we took the time, could we go through many  
2 more examples?

3 A. Yes, sir.

4 Q. Did I -- in summary, let me ask it this way. Out  
11:38:02 5 of the 10 -- no, the 8,000, near 8,000 prescriptions you  
6 looked at, do you have an opinion whether or not you were  
7 able to see documentation that those red flags were  
8 resolved in a way that makes you -- well, let me just say  
9 it that way first.

11:38:26 10 Were you able to see documentation in the  
11 vast majority that the red flags were resolved?

12 A. No, sir.

13 Q. Is it, in fact, to the contrary?

14 A. Yes, sir.

11:38:37 15 Q. Is that important when you render the opinions  
16 you've rendered in this case?

17 A. Yes, sir.

18 Q. Why is that important?

19 A. As we talked, the red flags indicate that there's  
11:38:50 20 something with the prescription that needs to be resolved  
21 and then we're talking about opioids which are extremely  
22 dangerous medications.

23 So when I looked at all these prescriptions  
24 which had red flags, the overwhelming majority, and in my  
11:39:06 25 report I said based upon my best educated experienced

1 guess, it looks like 90 percent of those prescriptions  
2 did not have adequate documentation, but I couldn't  
3 really tell on the others as well.

4 But given some of the exceptions that we  
11:39:24 5 talked about yesterday where perhaps the person went to  
6 the Cleveland Clinic, perhaps it was a prescriber like an  
7 orthopedic surgeon, I said there's probably maybe 10  
8 percent of those prescriptions that did have some  
9 documentation or documentation that would have met  
11:39:39 10 requirements so that someone else could understand and  
11 fill it.

12 But overwhelmingly, in my overwhelming  
13 opinion, about 90 percent of what I looked at didn't meet  
14 that level of documentation that was required.

11:39:53 15 And any documentation, any one prescription  
16 is important because any one prescription could harm or  
17 kill a patient.

18 Q. We've heard from several witnesses and we'll hear  
19 from more that the pharmacist is the last line of  
11:40:06 20 defense.

21 Are you familiar with that concept?

22 A. Yes, sir.

23 Q. Would you explain to the jury from your expertise  
24 and perspective what that -- why that is important?

11:40:16 25 A. Sure.

1                   When you're in the hospital and you're  
2                   given a medication, there's a nurse that administers it,  
3                   there's other people to monitor that medication, to take  
4                   care of the patient in case something goes wrong.

11:40:28 5                   When you're walking into a community  
6                   pharmacy, the minute that pharmacist or technician gives  
7                   you that medication, that's the last person that can  
8                   safeguard that you're getting the right medication and  
9                   that you're protected, and if you take that medication or  
11:40:43 10                  your child or family member takes that medication, that  
11                  it's safe to do so.

12                   Once it leaves that pharmacist and  
13                  pharmacy, and you take the medication, there's no one  
14                  else there to prevent something from happening.

11:40:55 15               Q.       Okay.

16                   During opening, I used different sieves,  
17                  different sized screens to explain that there can be a  
18                  loose way of letting prescriptions go through or there  
19                  can be a tighter way where you have to work harder and  
11:41:12 20                  focus.

21                   With that as a metaphor or analogy, can you  
22                  explain what in summation is your opinion about the  
23                  policies and procedures that you have seen from all of  
24                  the defendants, whatever is in common with all four?

11:41:30 25                  MS. FUMERTON: Objection, Your Honor.

1 Leading.

2 THE COURT: Overruled.

3 A. Not having heard the opening statement but from  
4 what Mr. Lanier just said, as a pharmacist and what I'm  
11:41:48 5 supposed to do as a pharmacist, I would say that the  
6 filter I use and need to use is the smallest filter to  
7 make sure that I do everything I can for that patient.

8 When I looked at the policies and looked at  
9 the results of those policies, the numbers of  
11:42:04 10 prescriptions with red flags that were actually  
11 dispensed, the lack of documentation for that  
12 overwhelming majority of red flags, it would be my  
13 opinion on the example that Mr. Lanier gave that those  
14 policies and the lack of enforcement of those policies  
11:42:19 15 probably used much bigger or the biggest filter in order  
16 to write as many prescriptions through as possible;  
17 whereas, the pharmacist then has to work at the other end  
18 and restrict how many prescriptions you go through,  
19 particularly of the ones I looked at.

11:42:34 20 Q. I mentioned to the jury through you at the  
21 beginning of your examination, we have retained you as an  
22 expert.

23 You, like the experts from all the parties,  
24 I think are being paid.

11:42:46 25 I did not ask what your hourly rate was?

1 Can you tell us, please?

2 A. Sure.

3 I'm being paid \$300 an hour for my work.

11:42:57

4 Q. It looks to me like the last bill we had gotten  
5 from you was August of this year?

6 A. Yes, sir.

7 Q. So you owe us a bill, I guess, at this point?

8 A. For September, sir.

9 Q. Yes, sir.

11:43:04

10 And some of October. You're not here for  
11 free today, are you?

12 A. No, sir.

13 Q. All right. But so the jury's got a way of putting  
14 this into computations, as of August of '21 bill, you had  
15 been paid \$64,140.

11:43:19

16 Does that sound about right?

17 A. Yes, sir.

18 Q. All right.

19 MR. LANIER: Thank you for all the work  
20 you've done and for your testimony.

11:43:27

21 Your Honor, at this point, I'll pass the  
22 witness.

23 THE COURT: Okay. Thank you, Mr. Lanier.

24 We will start the cross-examination.

11:43:38

25 Who is -- who is going first?

1 MS. FUMERTON: Thank you, Your Honor.

2 Tara Fumerton on behalf of Walmart.

3 Just so I can plan accordingly, it's about  
4 a quarter to noon right now. When would you like to  
11:43:50 5 break for lunch?

6 THE COURT: Well, you can go for about 15  
7 minutes or so.

8 MS. FUMERTON: Okay. Thank you, Your  
9 Honor.

11:44:08 10 And, Your Honor, may I please approach the  
11 witness?

12 THE COURT: Okay.

13 MS. FUMERTON: I have a binder for the  
14 witness.

11:45:05 15 May it please the Court.

16 THE COURT: Yes, ma'am.

17 CROSS-EXAMINATION OF CARMEN CATIZONE

18 BY MS. FUMERTON:

19 Q. Good morning, ladies and gentlemen of the jury. My  
11:45:11 20 name is Tara Fumerton, and I am one of the attorneys for  
21 Walmart.

22 I'm going to start off asking Mr. Catizone  
23 some questions today.

24 Good afternoon -- or good morning,  
11:45:21 25 Mr. Catizone.

1 A. Good morning.

2 Q. I'm excited to get to lunch.

3 You testified yesterday about your role  
4 with the National Association of Boards of Pharmacy,  
11:45:33 5 which is also abbreviated as NABP, correct?

6 A. Yes.

7 Q. But you are not here to talk to the jury on behalf  
8 of NABP, right?

9 A. Correct.

11:45:43 10 Q. You are here in your personal capacity?

11 A. Yes.

12 Q. And your opinions are your own?

13 A. Yes.

14 Q. They are not the opinions of NABP, correct?

11:45:53 15 A. Correct.

16 Q. And the NABP has not reviewed your report in this  
17 case, correct?

18 A. Correct.

19 Q. You agree that just because a prescription flags  
11:46:08 20 under one of your 16 red flags, that does not mean that  
21 it was written for an illegitimate medical purpose,  
22 correct?

23 A. Correct.

24 Q. You also agree that it does not mean that the  
11:46:20 25 medicine that was dispensed to fill that prescription was

1 diverted, correct?

2 A. Correct.

3 Q. You also agree that every one of your 16 red flags  
4 is resolvable, right?

11:46:37 5 A. No.

6 Q. And is that because you believe that the red flag  
7 with three different combinations is not resolvable?

8 A. Correct, the Trinity red flag I do not believe is  
9 resolvable.

11:46:49 10 Q. But you are not a doctor, correct?

11 A. Correct.

12 Q. Every other one of your 15 red flags is resolvable?

13 A. Correct.

14 Q. And if those red flags are resolved, that

11:47:01 15 prescription is not likely to lead to diversion, correct?

16 A. If one of the resolutions involves not dispensing  
17 the prescription, then yes.

18 Q. Well, if the red flags are resolved on a  
19 prescription, so the prescription is legitimate, then

11:47:17 20 that prescription is not likely to lead to diversion,  
21 correct?

22 A. No.

23 What I would consider resolution or

24 resolving is not filling the prescription as one of the

11:47:26 25 ways to resolve a red flag.

1 Q. But you can also resolve a red flag by turning out  
2 that it's a legitimate prescription; it was a caution  
3 sign but that you called the doctor and you found out  
4 that that caution was resolved, right?

11:47:39

5 A. Correct.

6 Q. And in that instance, if you resolve those red  
7 flags, that prescription, if it's filled, is not likely  
8 to be diverted, right?

9 A. Correct.

11:47:49

10 Q. And you can resolve a red flag and not document it,  
11 right?

12 A. No.

13 Q. Well, let's be clear.

14 I know your opinion is that you should

11:48:02

15 document it, but you can resolve a prescription -- a red  
16 flag on a prescription and not document it, right?

17 A. No.

18 Q. And why is that?

19 A. There are two, two references and two reasons for

11:48:16

20 that, and the federal law we talked about yesterday and  
21 Section 1306.06, it talks about the responsibility of a  
22 DEA registrant, which is the pharmacy and the pharmacist  
23 acting as their agents, dispensing controlled substances  
24 in accordance with professional practice and standards.

11:48:36

25 And then there was a DEA case, the *Hills*

1 case, that clarified what those further requirements or  
2 what those additional documentation requirements would  
3 be.

4 The second reference is 21, U.S.C., 827a,  
11:48:54 5 and that specific language says any DEA registrant  
6 dispensing controlled substances must provide an accurate  
7 and complete record of that dispensing.

8 And then there were two other actions taken  
9 by the DEA, the *Hills* case and the Dr. Volkman case,  
11:49:17 10 which was a physician here in Ohio, that clarified  
11 further what that documentation should be.

12 So my answer to the question is no, you  
13 can't not resolve a red flag without documenting it.  
14 Part of the accurate and complete record of documenting  
11:49:33 15 red flags is the documentation, and you can't separate  
16 the two, ma'am.

17 Q. So I still think you're misunderstanding my  
18 question and we're going to get to it in a little bit  
19 probably after lunch, you know, where you think that this  
11:49:46 20 documentation requirement is written.

21 But your position, just to be clear, is  
22 that if you don't document a red flag, that turns a  
23 legitimate prescription into an illegitimate  
24 prescription?

11:50:02 25 A. No, sir.

1 I think you're confusing -- if I can  
2 understand the question for you, I apologize, if it's a  
3 legitimate prescription, that's not going to change. If  
4 there's a red flag with a prescription and you resolve  
11:50:16 5 the red flag, and document the red flag, is different  
6 than whether it's a legitimate prescription or not.

7 Q. And that was what I was asking with my original  
8 question.

9 So you can have a prescription that's a  
11:50:27 10 legitimate prescription that presents a red flag, you  
11 resolve that red flag, you don't document it, but it's  
12 still a legitimate prescription, correct?

13 A. Again I -- I apologize.

14 Q. Yes or no?

11:50:39 15 A. The answer is you cannot -- you cannot dispense it  
16 until the red flag has been resolved.

17 Q. That wasn't my question.

18 It's still a legitimate prescription,  
19 correct?

11:50:47 20 A. No.

21 Q. So if you have a prescription that's a legitimate  
22 prescription with a red flag, you don't document it,  
23 you're saying it's now an illegitimate prescription?

24 A. I'm saying if you have a prescription with a red  
11:51:00 25 flag, you don't know if it's legitimate until you resolve

1 and document that red flag.

2 Q. So once you resolve the red flag, it's your opinion  
3 that that prescription is illegitimate until you document  
4 it?

11:51:15 5 A. It's unknown to the pharmacist whether it's  
6 legitimate or not until the red flag is resolved and  
7 documented.

8 Q. But, sir, I'm confused by this.

9 So I have a question about a prescription.  
11:51:27 10 I call the doctor to resolve my question about the  
11 prescription.

12 At that point in time, that red flag is  
13 resolved; in my mind, I know that it's resolved.

14 Now, perhaps I don't document that, but I  
11:51:40 15 resolve that red flag in my mind, correct?

16 A. As a pharmacist, I can't resolve red flags in my  
17 mind. I have to actually resolve that red flag and  
18 document that so that a pharmacist coming after me knows  
19 the red flag's been resolved or the Board of Pharmacy or  
11:51:58 20 DEA knows it's been resolved.

21 For me to just say I've resolved in my head  
22 without documenting it doesn't solve the problem, it  
23 doesn't provide the documentation that's required.

24 Q. Again, sir, I understand what your position is that  
11:52:10 25 you have a requirement to document, but a pharmacist can

1 absolutely resolve in their mind a red flag, correct?

2 A. Again I respectfully disagree with you.

3 As a pharmacist, in my opinion a pharmacist  
4 can't resolve a red flag in their mind and then dispense  
11:52:26 5 that prescription. It has to be documented.

6 Q. So let's take the example you keep using, the  
7 Cleveland Clinic.

8 There's a prescription that a patient  
9 presents more than 25 miles from where they live because  
11:52:37 10 they visited the Cleveland Clinic.

11 The pharmacist thinks, hmm, they traveled,  
12 but it's the Cleveland Clinic. Are you saying that's not  
13 now resolved?

14 A. Yes.

11:52:51 15 Q. It's not resolved until they write the words  
16 "Cleveland Clinic"?

17 A. It's not resolved until they identify the red flag  
18 that the patient lives more than 25 miles away and the  
19 patient went to the Cleveland Clinic and verified with  
11:53:04 20 the physician that it was for a legitimate medical  
21 purpose.

22 I have seen fraudulent and nonlegitimate  
23 prescriptions from the Cleveland Clinic, from  
24 Massachusetts General, from Duke University.

11:53:18 25 So the pharmacist would need to resolve

1 that red flag, if that red flag was there, and document  
2 it.

3 Q. Well, I want to turn back to some of those examples  
4 of red flags and look at some specific prescriptions  
11:53:37 5 actually, but let's go back to your methodology, first.

6 You concluded that defendants' local stores  
7 filled thousands of prescriptions presenting red flags,  
8 right?

9 A. Yes.

11:53:49 10 Q. And in your opinion, a red flag is a caution sign,  
11 right?

12 A. Yes.

13 Q. And then you relied upon another one of plaintiffs'  
14 experts, Dr. Craig McCann, to review and calculate the  
11:54:07 15 number of prescriptions dispensed, the amount of doses  
16 dispensed, and the Morphine Milligram Equivalents  
17 dispensed for each red flag by the pharmacies, correct?

18 A. Not exactly.

19 If I can clarify, what I relied on Dr.  
11:54:23 20 McCann to do is I identified the 16 red flags, and then  
21 he ran the analysis of how many prescriptions flagged  
22 those red flags and he also then determined when the red  
23 flag was excessive dose, what the Morphine Milligram  
24 Equivalents would be for that prescription.

11:54:39 25 Q. Okay. So I'm not trying to put words in your

1 mouth, but in other words, you relied on Dr. McCann to  
2 apply your red flags to the data?

3 A. Yes, ma'am.

4 Q. Is that fair?

11:54:49 5 A. Yes, ma'am.

6 Q. And you yourself are not a data expert, right?

7 A. Correct.

8 Q. You left it up to Dr. McCann to decide how to  
9 implement your red flags to the data, right?

11:55:01 10 A. Well, not to implement, but to run the data and  
11 identify the red flags, so it may be just a  
12 clarification, but whatever processes he used to identify  
13 how many prescriptions, flagged those red flags.

14 Q. And you've given depositions in this case, right?

11:55:18 15 A. Yes, ma'am.

16 Q. And I've put up there in your binder copies of  
17 those deposition transcripts in case we need to reference  
18 them.

19 A. Yes.

11:55:26 20 Q. But do you recall testifying previously that you  
21 left it up to Dr. McCann how to implement the red flags?

22 A. Yes, ma'am.

23 Q. Does Dr. McCann have a background in pharmacy?

24 A. I have no idea.

11:55:45 25 Q. So then Dr. McCann ran the analysis, and he

1 reported back to you the number of prescriptions for each  
2 defendant that hit on one or more of your red flags,  
3 right?

4 A. Reported back to me, yes, essentially.

11:56:02 5 Q. And at that point in time, and I want to focus  
6 before this more recent report, you never looked at any  
7 of the underlying prescriptions to determine if they, in  
8 fact, had red flags, right?

9 A. Correct.

11:56:32 10 Q. And then months later, you wrote a supplemental  
11 report, right?

12 A. Correct.

13 Q. And that was after the defendants in these cases  
14 had produced the random sample of hard copy prescriptions  
11:56:45 15 and associated electronic notes, correct?

16 A. Correct. Yes.

17 Q. And you testified there's almost 8,000 hard copy  
18 prescriptions that you reviewed?

19 A. Yes. Approximately.

11:56:54 20 Q. And all the electronic notes that were produced for  
21 those prescriptions as well?

22 A. Yes.

23 Q. And you said that you looked at every single one of  
24 those prescriptions and notes, correct?

11:57:05 25 A. Yes, I did.

1 Q. And you reviewed all of those 8,000 hard copy  
2 prescriptions, all of the electronic notes associated  
3 with those 8,000 hard copy prescriptions, did whatever  
4 other analysis you needed to do, wrote a report, and that  
11:57:24 5 took you approximately 20 to 25 hours, correct?

6 A. Yes.

7 Q. I want to go into talking about this documentation  
8 requirement --

9 MS. FUMERTON: And, Your Honor, this is  
11:57:58 10 probably going to take awhile.

11 THE COURT: Okay. Then I think it's a good  
12 time for a break.

13 Thank you, Ms. Fumerton.

14 MS. FUMERTON: Thank you.

11:58:05 15 THE COURT: All right. Ladies and  
16 gentlemen, we'll take our noon recess until 1:00 o'clock.

17 Usual admonitions apply and then we'll pick  
18 up with further cross-examination.

19 Thank you.

11:58:15 20 (Jury out.)

21 (Luncheon recess taken)

22 - - - - -

23

24

12:57:28 25

1                   FRIDAY, OCTOBER 8, 2021, 12:57 P.M.

2                   THE COURT: All right. I wanted to cover  
3 something quickly before we bring the jury in.

4                   Special Master Cohen is reviewing some  
12:58:05 5 objections to the deposition of Brad Nelson, a former  
6 Walmart employee who is on the plaintiffs' witness list  
7 for next week.

8                   The objections have been interposed because  
9 the defendants believe that some of Mr. Lanier's  
12:58:32 10 drawings, when he was deposing Mr. Nelson, inaccurately  
11 depicted Mr. Nelson's testimony.

12                   And there have been a few instances when  
13 this has happened live and I've pointed that out, and  
14 Mr. Lanier has corrected his drawings.

12:58:48 15                   Obviously it can't be done retroactively,  
16 so I don't know, you know, Special Master Cohen said this  
17 deposition lasts six, seven hours.

18                   I don't know how many instances the  
19 defendants have identified where Mr. Lanier's writing of  
12:59:11 20 what the witness said is just dramatically different.  
21 I'm not saying that, you know, but it's just not what he  
22 said.

23                   Ms. Fumerton, Mr. Majoras, do you have a  
24 sense of how -- of how frequent this was?

12:59:27 25                   MS. FUMERTON: Yes, Your Honor.

1 It actually is throughout the deposition.

2 One big example would be with respect to

3 certain settlement agreements that we still object to

4 being admitted, and I think that's also pending before

12:59:42 5 the Special Master, but he refers to them as failures and

6 I know for other people, he changed them to problems.

7 These are settlements where there was no

8 admission.

9 THE COURT: Does the witness say failures

12:59:54 10 or Mr. Lanier just wrote failures?

11 MS. FUMERTON: Mr. Lanier just wrote

12 failures.

13 THE COURT: All right. Look --

14 MR. LANIER: Your Honor, I'm glad to look

13:00:01 15 at those.

16 I don't want any misrepresentations in my

17 notes, and I have not reviewed those, but I'll represent

18 to the Court I'll do it this weekend and I'll take out

19 anything at all that's not accurate.

13:00:11 20 MS. FUMERTON: And, Your Honor --

21 THE COURT: Is there a way to do that

22 retroactively?

23 How do you do that, Mark?

24 MR. LANIER: I'll just have to remove the

13:00:19 25 entire note from the video at that point, Your Honor.

1 THE COURT: All right.

2 MR. LANIER: But if I do that, I don't want  
3 an inaccuracy in the record and it's my obligation if I  
4 want to make the notes I need to make them right.

13:00:31 5 Some of them --

6 THE COURT: If it's close, it's not a big  
7 deal.

8 But for example, if the witness doesn't say  
9 failure and you write failure, you're testifying, that's  
10 out.

11 MR. LANIER: Right. And I'll look at those  
12 and I'll be very careful and I've gotten a good feel for  
13 you throughout this trial I think at this point and  
14 certainly know Special Master Cohen has a great feel for  
13:00:53 15 you. And so I commit to you I'll go through those and  
16 I'll look at the examples and --

17 THE COURT: Why don't, Ms. Fumerton, if you  
18 can point out what you think are the most flagrant  
19 examples so he certainly corrects that, and then I think  
13:01:06 20 that's the way to do it.

21 MS. FUMERTON: So, Your Honor, here just to  
22 sort of give you an example of the problem, he actually  
23 uses as one of his road maps, and I know we're all now  
24 familiar with that, one of the stops is failures. So he  
13:01:18 25 keeps going over and over and that was pre-populated by

1 him. It was not something that the witness said.

2 We objected to the demonstrative at the  
3 time of how it was inaccurate and we've continued to  
4 object all along.

13:01:28 5 He had the opportunity to cure it, based on  
6 our objection and chose not to cure it, and so he decided  
7 how he wanted to do that deposition. And, unfortunately,  
8 now there's a large portion of that deposition --

9 THE COURT: Look, the alternative is I can  
13:01:42 10 just say forget the deposition; Mr. Nelson will testify  
11 live via video and we'll just do him live. And if there  
12 are any drawings, they'll be accurate or they won't -- or  
13 they will be objected to and corrected on the spot.

14 MS. FUMERTON: So, Your Honor --

13:02:00 15 MR. LANIER: Your Honor, in fairness, so  
16 you understand the context, I think I understand the  
17 deposition. The only things I term as failures I don't  
18 think you do, and so I want us to talk about them and see  
19 if you'll agree that they are failures and so I  
13:02:14 20 specifically said that was my word, not his.

21 I wasn't representing that was his word.

22 MS. FUMERTON: And the witness disagreed  
23 with you.

24 But, so, Your Honor, it's clearly --

13:02:25 25 THE COURT: All right. Fine, make it

1 simple. We'll forget the deposition and he'll testify  
2 live.

3 Where does he live?

4 MS. FUMERTON: Well, so, Your Honor, he's  
13:02:34 5 also a former employee who we do not have control over.

6 THE COURT: I have control.

7 I'll tell him he will show up. Where does  
8 he live? He'll go to an office in his city and testify  
9 by video.

13:02:46 10 MS. FUMERTON: Your Honor, respectfully, I  
11 think it seems unfair to have to require us to go through  
12 that when the problem is with Mr. Lanier's objectionable  
13 drawing and so he now gets a second bite at the --

14 THE COURT: What are you suggesting?

13:02:59 15 MS. FUMERTON: One potential would be  
16 Mr. Lanier does not get to show that demonstrative, that  
17 we cut that from the deposition.

18 They want to show three different feeds at  
19 once, including him drawing with his hands. We cut that  
13:03:11 20 out and take a hard look at the deposition over the  
21 weekend and see if we can excise out the failure portion.

22 THE COURT: One option is to have two  
23 cameras -- one and three, whatever.

24 MS. FUMERTON: Yes, Your Honor, that's  
13:03:23 25 another way to do it. Just have the witness testify --

1 THE COURT: Look, why don't you work on it  
2 over the weekend?

3 If you come to a satisfactory resolution,  
4 fine. If not, we'll just have Mr. Nelson, you know,  
13:03:35 5 testify by video from where he lives, and there will not  
6 be any inaccurate drawings because I'll make sure of it  
7 because I'll be watching.

8 MS. FUMERTON: Your Honor, respectfully,  
9 we'll discuss this with plaintiffs.

13:03:46 10 THE COURT: That's the option.

11 If you can't work it out, Ms. Fumerton,  
12 that's what I'll do. You know, I -- that's what we'll  
13 do.

14 I mean, there's no -- he's going to  
13:03:57 15 testify. He's allowed to testify, so there's -- and I  
16 see three options.

17 One, you work it out so that -- so that  
18 there's no showing of an inaccurate drawing. Okay?

19 I mean, I can't excise Mr. Lanier's  
13:04:17 20 questions or something, but the jury isn't going to see  
21 any writing that's not accurate. That's one.

22 Option two is I don't see Mr. Lanier at  
23 all. All right? He's talking, obviously they hear him  
24 and if he's talking about what he's writing, he's talking  
13:04:38 25 about what he's writing but no one sees anything that

1 he's writing. In fact, they only see him. They only see  
2 Mr. Nelson.

3 And option three is Mr. Nelson just  
4 testifies live, via video, and I'll make sure that if  
13:04:50 5 Mr. Lanier chooses to do his drawings, that they  
6 accurately reflect what Mr. Nelson says.

7 MS. FUMERTON: And, yes, Your Honor, the  
8 first two options are fine with us.

9 THE COURT: Well, why don't you, you know,  
13:05:04 10 then work it out and go with, you know, if you can work  
11 out one of those two, fine.

12 So, all right.

13 MR. DELINSKY: Your Honor, could I raise a  
14 brief issue from this morning?

15 THE COURT: Very briefly.

16 MR. DELINSKY: I think there was a glitch,  
17 Your Honor.

18 Mr. Catizone, the plaintiffs introduced  
19 this document and I'm showing it to your Honor so you can  
13:05:29 20 see what it looks like, and this had not been  
21 disclosed --

22 THE COURT: I don't know, what  
23 document -- is there a number?

24 MR. DELINSKY: P 20695.

13:05:41 25 THE COURT: All right. This WeCare work

1 flow. All right.

2 MR. DELINSKY: And what was disclosed was a  
3 document that was one Bates label over that looks the  
4 exact same.

13:05:56 5 This wasn't disclosed to us the night  
6 before.

7 We're just asking that the document that  
8 contains the comparable language --

9 MR. LANIER: We're glad to substitute, Your  
13:06:09 10 Honor. Both were on his list. One was the 2013 version,  
11 one was the 2019 version, and evidently each night ahead  
12 of time under, our protocol is we give them the list of  
13 documents we plan on using.

14 It looks like they were given a  
13:06:23 15 list -- they were given the number to the 2019 instead of  
16 2013 version, which is the one that made my point but  
17 we're glad to go ahead and clarify it on the record and  
18 put it in.

19 THE COURT: All right.

13:06:33 20 MR. LANIER: That won't be a problem.

21 THE COURT: 20695, which is the one that  
22 was referred to is actually the 2019?

23 MR. DELINSKY: 2013, Your Honor.

24 MR. LANIER: 20695 we used.

13:06:46 25 It is the 2013 version of 20645, which is

1 the 2019 version.

2 We disclosed the '19 version instead of the  
3 '13 version, though both are in his report.

4 And so they should have, last night, I  
13:07:05 5 should have told them I'm going to use the '13 instead of  
6 the '19 version.

7 But I'm glad to make that substitution.

8 THE COURT: All right. Why don't you  
9 clarify that when, you know --

13:07:14 10 MR. LANIER: I will.

11 THE COURT: All right. Okay. We can bring  
12 in the jury then.

13 (Jury in.)

14 THE COURT: All right. Please be seated,  
13:08:53 15 ladies and gentlemen.

16 And, Mr. Catizone, I just want to remind  
17 you you're still under oath from this morning.

18 You may proceed, Ms. Fumerton.

19 MS. FUMERTON: May it please the Court.

13:08:57 20 THE COURT: Yes.

21 CROSS-EXAMINATION OF CARMEN CATIZONE (RESUMED)

22 BY MS. FUMERTON:

23 Q. Good afternoon, Mr. Catizone.

24 A. Good afternoon.

13:09:33 25 Q. It is your opinion that the practice of pharmacy is

1 governed by well-defined laws and regulations, correct?

2 A. Yes, it is.

3 Q. And so I want to spend some time talking really  
4 specifically about where in those well-defined laws and  
13:09:57 5 regulation it refers to red flags and documentation and  
6 so I'm just setting the stage, sir, of the sort of  
7 questions that are going to come up.

8 Nowhere in the Controlled Substances Act do  
9 the words "red flag" appear, correct?

13:10:14 10 A. Correct.

11 Q. And nowhere in the Controlled Substances Act does  
12 it list your 16 red flags that you described to the jury,  
13 correct?

14 A. Correct.

13:10:25 15 Q. And nowhere in the CSA does it state that a  
16 pharmacist must document red flags, correct?

17 A. Not correct.

18 Q. Well, let me be very clear.

19 You just agreed that there's nowhere in the  
13:10:42 20 CSA that the word "red flags" appears, right?

21 A. Yes. Yes, ma'am.

22 Q. And so just by logic, there's nowhere in the CSA  
23 that it says pharmacists must document red flags,  
24 correct?

13:10:57 25 A. That specific language is not in the Controlled

1 Substances Act.

2 Q. And the Controlled Substances Act also does not  
3 specifically state that a pharmacist must document the  
4 resolution of red flags, correct?

13:11:13 5 A. The specific wording, no.

6 But the concept is there and the  
7 requirement is there.

8 Q. So conceptually, it's there. Is that your point?

9 A. And specifically in terms of, as I mentioned  
13:11:30 10 earlier, every registrant who dispenses a controlled  
11 substance must maintain an accurate and complete record  
12 of that dispensing, and corresponding responsibility,  
13 which we've talked about, includes red flags.

14 Q. Okay. So let's take a look at those.

13:11:46 15 The first thing that you just talked about,  
16 that was 21, U.S.C., 827a, that's what you cited before  
17 lunch, right?

18 A. Correct.

19 Q. Okay. Now, Mr. Catizone, is this the law that  
13:12:08 20 you're citing?

21 A. Yes.

22 Q. Okay. And can you please show us where it says  
23 anything about red flags.

24 A. I don't think, if I point to my screen, it shows  
13:12:21 25 up, but it's in that where you've highlighted where it

1 says "Number one, every registrant under this sub chapter  
2 shall, on May 1st, 1971, or as soon thereafter as such  
3 registrant first engages in the manufacture, distribution  
4 or dispensing of controlled substances and every second  
13:12:43 5 year thereafter make a complete and accurate record of  
6 all stocks thereof on hand, except that the regulations  
7 prescribed under this section shall permit each such  
8 biennial inventory following the initial inventory  
9 required by this paragraph to be prepared on such  
13:13:02 10 registration's regular general physical inventory date,  
11 if any," and then it continues.

12 Q. Okay. I just want to make sure I have the entire  
13 portion of this highlighted that you think states that  
14 pharmacists have a document -- have a duty to document  
13:13:14 15 the resolution of red flags.

16 Is it all highlighted?

17 A. Yes.

18 Q. And I just want to make sure I get an exhaustive  
19 list here.

13:13:38 20 So the other regulation that you just cited  
21 was 1306.04; is that correct?

22 A. 06, please.

23 Q. 1306.04? I'm sorry?

24 A. 1306.06.

13:13:53 25 Q. Sorry. Got it.



1 it's a fairly short provision. Is that right?

2 Okay. Mr. Catizone, is this what you were  
3 referring to a few moments ago?

4 A. Yes, I was.

13:16:07 5 Q. Okay. And so this particular regulation states, "A  
6 prescription for a controlled substance may only be  
7 filled by a pharmacist, acting in the usual course of his  
8 professional practice and either registered individually  
9 or employed in a registered pharmacy, a registered  
13:16:25 10 central fill pharmacy, or registered institutional  
11 practitioner."

12 Correct?

13 A. Yes.

14 Q. Okay. And so this is the other regulation that you  
13:16:32 15 say requires that a pharmacist identify the 16 red flags  
16 that you referred to and then document the resolution of  
17 those 16 red flags, correct?

18 A. No.

19 This is -- I thought the response to the  
13:16:48 20 question that said where does it say a pharmacist must  
21 document, that was the reference there.

22 The definition of corresponding  
23 responsibility is what lays out the basis for red flags  
24 and resolving those red flags.

13:16:59 25 Q. Okay. So let's be clear.

1 I didn't mean to misstate what you said.

2 So this particular regulation states the  
3 requirement that a pharmacist must document the  
4 resolution of red flags, correct?

13:17:11 5 A. A pharmacist and pharmacy, since the pharmacy is  
6 the registrant and the pharmacist are agents of the  
7 pharmacy.

8 Q. Okay. And so now we've just looked -- we can take  
9 that down, thank you, Steve -- we've now just looked at  
13:17:24 10 the two portions of the relevant regulations that you  
11 think most directly state what you're trying to testify  
12 to today, correct?

13 A. For documentation.

14 The definition of corresponding  
13:17:34 15 responsibility is for the red flags.

16 Q. Yes. And just since you mentioned it, why don't we  
17 just look at that, too, so the jury can get a full  
18 picture and then we will move on? Can we pull up -- I  
19 actually think I have that here.

13:17:50 20 And so that's 1306.04, correct?

21 A. Yes.

22 Q. And that's what I have highlighted right here,  
23 correct?

24 A. Yes, ma'am.

13:18:02 25 Q. Okay. And so specifically where does it identify

1 your 16 red flags?

2 A. The specific red flags are not identified in this  
3 section, but the statutory and regulatory basis is laid  
4 there, the DEA in actions have defined as other red  
13:18:22 5 flags.

6 Q. So let's focus on this regulation now. So where  
7 specifically can you point me to the words that talk  
8 about the identification and resolution of red flags?

9 A. The very first sentence of the relevant sections --  
13:18:37 10 and I apologize. I have to look at the screen so I'm not  
11 addressing the jury directly but I apologize for that.

12 "A prescription for a controlled substance  
13 to be effective must be issued for a legitimate medical  
14 purpose."

13:18:51 15 That says the pharmacist has to determine  
16 that that prescription's been issued for a legitimate  
17 medical purpose. Anything that indicates that it's not  
18 for a legitimate medical purpose becomes a red flag as  
19 defined by the DEA.

13:19:04 20 Q. Okay.

21 A. Continuing, it says, "The responsibility for the  
22 proper prescribing and dispensing for controlled  
23 substances is upon the prescriber, prescribing  
24 practitioner, but a corresponding responsibility rests  
13:19:17 25 with the pharmacist who fills the prescription. An order

1 purporting to be a prescription issued not in the usual  
2 course of professional treatment or legitimate and  
3 authorized research is not a prescription within the  
4 meaning and intent of this section."

13:19:33

5 So the prior section we just read --

6 Q. Respectfully, I think your counsel can ask you some  
7 additional questions on redirect if he wants to.

13:19:47

8 But I'm just trying to get an understanding  
9 of what the words are that you're relying on, and have I  
10 accurately highlighted them?

11 A. Well, you asked me what --

12 MR. WEINBERGER: Your Honor, can he finish  
13 his answer?

14 THE COURT: There's a question.

13:19:55

15 Mr. Catizone, Ms. Fumerton has just  
16 highlighted the balance of a big chunk of that paragraph  
17 and asked you if that's what you're referring to.

13:20:10

18 THE WITNESS: And then the next section is  
19 underneath it says, "A person knowingly filling such a  
20 purported prescription, as well as the person issuing it,  
21 shall be subject to penalties provided for violations of  
22 the provisions of law."

13:20:24

23 Those sections provide -- answer the  
24 response to your question about what's the basis for the  
25 red flags.

1 Q. Thank you very much.

2 Mr. Catizone, you're familiar with the  
3 DEA's publication, *The Pharmacists' Manual: An*  
4 *Informational Outline of the Controlled Substances Act*,  
5 correct?

13:20:48

6 A. Yes, I am.

7 Q. And the most recent version from 2020 was over 120  
8 pages, does that sound about right?

9 A. I haven't seen it, but I will take that word for  
10 it.

13:21:01

11 Q. If you could turn to Tab 1 of your binder.

12 A. Okay.

13 Q. This is the 2020 version of the DEA *Pharmacist's*  
14 *Manual*, correct?

13:21:20

15 And please take a minute to look at it.

16 A. Tab 1 says, "C. Catizone deposition, Volume 1." It  
17 doesn't -- Tab 2 is "C. Catizone deposition Volume 2." I  
18 don't see the *Pharmacist's Manual* in here. Oh, it's tab  
19 one, two, three, four -- Tab 6.

13:21:41

20 Q. Thank you. I apologize for that.

21 Can you turn to Tab 6?

22 A. Yes, I've got it now.

23 Q. Okay. And so I'll ask my question again.

24 This is the DEA *Pharmacist's Manual* that  
25 was revised in 2020, correct?

13:21:57

1 A. Yes.

2 Q. And the DEA publishes this manual, right?

3 A. I believe so, yes.

4 Q. And if we look at the second page of the document.

13:22:17 5 A. Is that the letter from Timothy Shea, William  
6 McDermott and Loren Miller?

7 Q. Yes, but it's up on your screen to help orient you.

8 Please feel free to look at the document  
9 that you have in front of you as well, but the screen can  
13:22:29 10 help?

11 And this letter states, "*This Pharmacist's*  
12 *Manual* has been prepared by the Drug Enforcement  
13 Administration Diversion Control Division as a guide to  
14 assist pharmacists in their understanding of the federal  
15 Controlled Substances Act and its implementing  
13:22:43 16 regulations as they pertain to the pharmacy profession."

17 Correct?

18 A. Yes, that's what it says.

19 Q. And so this manual is used to help pharmacists  
13:22:55 20 understand some of the regulations and law that we just  
21 looked at, right?

22 A. Yes.

23 Q. So nowhere in this over 100-page document do the  
24 words "Red flags" appear, correct?

13:23:12 25 A. I haven't had a chance to go through the 2020

1 version so I really can't comment on it, but I'd be glad  
2 to go through it to see if it does.

3 Q. Well, please, I don't want you to go page by page.

4 Would it help you to flip through it at  
5 all?

13:23:26

6 A. It would take awhile, but I would be glad to do  
7 that.

8 Q. Okay. Well, look, you say you haven't looked at  
9 the 2020 version, but have you looked at prior versions?

13:23:34

10 A. Yes, I have.

11 Q. And do the prior versions state anything about red  
12 flags?

13 A. I can't recall specifically again without looking  
14 at those versions.

13:23:40

15 Q. So you don't know one way or the other?

16 A. Correct.

17 Q. Okay. We may have some more time later to look  
18 through this.

19 And also, in this DEA *Pharmacist's Manual*,

13:23:53

20 it doesn't say anywhere that a pharmacist should document  
21 the resolution of red flags, correct?

22 A. Again I would like the opportunity to go through  
23 and see that for myself to be able to make that  
24 statement.

13:24:04

25 Q. Okay. Again, we have limited time, so I'll check.

1 A. Thank you.

2 Q. But right now you're not aware of any place in this  
3 manual that says that, correct?

4 A. I'm not aware because I haven't reviewed it.

13:24:17 5 Q. You've never reviewed it?

6 A. Not the 2020 version.

7 Q. Okay. What about the prior versions that you have  
8 reviewed?

9 A. I've reviewed those, but I'm not sure of the older  
13:24:26 10 versions, what's been in and what's been taken out.

11 It's something I would have to specifically  
12 refer to and look at the past versions.

13 Q. So you can't point to anything in the prior  
14 versions because you have not reviewed those, is that  
13:24:37 15 correct?

16 A. These were originally issued probably in the 1970s.

17 They've gone through several versions, so  
18 I'm not sure what versions you want to refer back to or  
19 --

13:24:48 20 Q. I'm just asking any version that you can recall.

21 A. I recall that there was, but I would have to do  
22 some research to determine what version it was in.

23 Q. Okay. I want to switch to standard of care for a  
24 moment.

13:25:15 25 You have defined the standard of care and

1 the practice of pharmacy as the expected care that should  
2 be delivered by a pharmacist, right?

3 A. Yes.

4 Q. And it is your professional opinion that it is  
13:25:29 5 possible to have a standard of care that most of the  
6 pharmacists in this country do not actually follow,  
7 right?

8 A. Yes.

9 Q. And you cannot name a single pharmacy chain or an  
13:25:46 10 independent pharmacy or any type of pharmacy that meets  
11 all of your standard of care requirements, including the  
12 documentation and resolution of the 16 red flags that you  
13 have identified, correct?

14 A. Not correct.

13:26:03 15 Q. Are you thinking of the one that you talked about  
16 in your deposition, Albertsons where you worked?

17 A. No.

18 I think I've looked at the information that  
19 was provided to me about the defendants, but I cannot  
13:26:14 20 make the statement that if I looked at every pharmacy in  
21 the United States or every other chain the same way, that  
22 I may be able to make the statement that not one pharmacy  
23 meets those standards.

24 I have to believe that just from a  
13:26:26 25 probability standpoint, that there are pharmacies that

1 meet that standard but I can't comment because I haven't  
2 reviewed all the other pharmacies.

3 Q. Well, but today, you can't name one, correct?

4 A. Based upon what I've said, without reviewing that  
13:26:40 5 information, I would say I can't name a pharmacy at this  
6 point but would be glad to do that research if that would  
7 help.

8 Q. And we're going to talk about this in more depth in  
9 a little bit, but you reviewed and you testified earlier  
13:26:58 10 about reviewing about 8,000 sample prescriptions, right?

11 A. Yes.

12 Q. And you looked at every single one and every note  
13 associated with that prescription, right?

14 A. Yes, I did.

13:27:08 15 Q. And after your review of the prescriptions and  
16 notes in this case, you could not identify a single  
17 instance in which you saw appropriate documentation,  
18 correct?

19 A. I think my report said that the overwhelming  
13:27:24 20 majority did not have the documentation that I considered  
21 adequate.

22 Q. You did your deposition last Friday, correct?

23 A. Pardon me? I'm sorry.

24 Q. You were deposed last Friday?

13:27:35 25 A. Yes. Yes.

1 Q. And in your deposition last Friday, you were asked  
2 can you think of a single instance in which you saw  
3 appropriate documentation, and you said you cannot,  
4 correct?

13:27:45 5 A. Correct.

6 In the deposition I responded if I could  
7 think of a prescription and identify that prescription,  
8 and at the time I couldn't.

9 Q. And can you now?

13:27:54 10 A. Again, if I have the opportunity to go through and  
11 look at those individual prescriptions, then I could  
12 probably identify some.

13 Q. And I don't need you to identify the specific  
14 prescription. I could see how that might be hard but can  
13:28:06 15 you describe one that you saw or from whose defendants  
16 files you saw that?

17 A. Sure.

18 One of the prescriptions that I saw or one  
19 of the notes associated with that prescription was that  
13:28:17 20 it was for a cancer patient, and so I've looked at that  
21 and said on the surface, this prescription could probably  
22 be resolved because it was for an opioid, but then when I  
23 went back to the spreadsheet, I noticed there were three  
24 other red flags associated with that prescription, and so  
13:28:36 25 I didn't have the additional information that wasn't

1 provided to me to actually resolve that red flag.

2 So on its face, just that prescription, I'd  
3 probably say there's something that could -- did  
4 document, but seeing the other red flags and not having  
13:28:53 5 the other documentation, I couldn't make that statement  
6 for that prescription.

7 Q. Okay. So that's another example of something you  
8 think that the pharmacy defendants didn't get right.

9 I'm asking for an example of something you  
13:29:04 10 think where they did appropriately document.

11 A. I can't recall a prescription where there was  
12 appropriate documentation to the extent that would be  
13 required.

14 Q. Okay. Let's start talking about your red flags and  
13:29:25 15 then we're going to look at a couple prescriptions.

16 And just in case it makes it easier for the  
17 jury, I'm going to put up some of the slides that you  
18 used with Mr. Lanier earlier today.

19 Okay. So the first two red flags that you  
13:30:10 20 identified relate to distance, right?

21 A. Yes.

22 Q. And I'm going to paraphrase, but red flag one is a  
23 patient fills a prescription more than 25 miles from  
24 where they live, right?

13:30:21 25 A. Yes.

1 Q. And red flag two is where a patient travels over 25  
2 miles to a doctor, right?

3 A. Yes.

4 Q. And you agree that there are numerous reasons why a  
13:30:30 5 patient may fill a prescription at a pharmacy more than  
6 25 miles from his or her home, right?

7 A. Yes.

8 Q. And you also agree that there are numerous reasons  
9 why a patient may visit a doctor more than 25 miles from  
13:30:41 10 their home, right?

11 A. Yes.

12 Q. Speaking of traveling for more than 25 miles from a  
13 pharmacy, for instance, an individual's drug coverage  
14 under their insurance plan may mandate that they use  
13:30:56 15 certain pharmacies over others, right?

16 A. Yes.

17 Q. Likewise, the pharmacy that an individual frequents  
18 may be out of the medication the patient needs, right?

19 A. Yes.

13:31:06 20 Q. And with respect to visiting doctors, a patient  
21 might travel to be treated by a doctor at a facility that  
22 is highly specialized to provide services, such as  
23 cardiac surgery?

24 A. Yes.

13:31:19 25 Q. Cancer treatment and management?

1 A. Yes.

2 Q. Burn treatment?

3 A. Yes.

4 Q. Plastic surgery?

13:31:25 5 A. Yes.

6 Q. Neurosurgery?

7 A. Yes.

8 Q. And then if that patient travels more than 25 miles

9 to visit that doctor and fills a prescription written by

13:31:36 10 that doctor at the pharmacy next door, that would flag

11 twice under your methodology, correct?

12 A. I'm sorry. I didn't understand the last part of  
13 the question.

14 Q. Sure.

13:31:48 15 A. When you entered the other pharmacy?

16 Q. So you have red flag one and two. The first one  
17 the patient travels more than 25 miles to visit a  
18 pharmacy. The second is the patient travels more than 25  
19 miles to visit a doctor, correct?

13:32:01 20 A. Correct.

21 Q. So if a patient travels, for example, a resident of  
22 Trumbull County goes to the Cleveland Clinic, which is  
23 more than 25 miles away, correct?

24 A. I -- yes. I believe so.

13:32:13 25 Q. You're just not familiar with this area?

1 A. I was born and raised on the south side of Chicago  
2 so I'm not familiar with this area.

3 Q. I live in Chicago, too, but since you're testifying  
4 here, I thought perhaps you might know more about the  
5 area.

13:32:26

6 But do you assume that is more than 25  
7 miles? I mean do you have any reason to dispute that the  
8 Cleveland Clinic is more than 25 miles?

9 A. No, I'm not arguing that point.

13:32:35

10 Q. Okay. So you have a resident in Trumbull County  
11 goes to the Cleveland Clinic, which is more than 25 miles  
12 away, receives a prescription for an opioid from a  
13 Cleveland Clinic doctor, and then fills that prescription  
14 at the pharmacy close to the Cleveland Clinic.

13:32:50

15 That patient is going to flag twice for  
16 that single prescription under your methodologies,  
17 correct?

18 A. The prescription would have two red flags  
19 associated with it.

13:33:03

20 And yesterday we spoke -- I spoke to the  
21 jury and discussed some of the examples that you gave and  
22 exceptions and talked about how that was something that I  
23 accounted for or recognized could occur.

24 Q. And it's an exception?

13:33:16

25 A. Exception from the red flag or something that would

1 be used to resolve that red flag if the pharmacist  
2 properly documented that.

13:33:28 3 Q. So it's an exception from the red flag, but you  
4 still counted all those instances as red flags when you  
5 were reviewing the data for pharmacies, correct?

6 A. Correct, because the documentation wasn't adequate  
7 to dispel that red flag.

8 Q. And there are other reasons why a patient might  
9 fill a prescription that is more than 25 miles away,  
13:33:54 10 right?

11 A. Yes.

12 Q. And an individual might be off to college?

13 A. There are numerous examples that we could talk  
14 about that would cover under that red flag, yes.

13:34:06 15 Q. Yes. An individual might be on vacation, right?

16 A. Yes. Could be a snowbird. A lot of different  
17 exceptions, yes.

18 Q. Let's look at red flag number three.

19 Your red flag number three is mainly for  
13:34:42 20 doctor shopping, correct?

21 A. Correct.

22 Q. But specifically, you stated that, "A patient was  
23 dispensed opioid prescriptions with overlapping days of  
24 supply that were written by two or more prescribers,"  
13:34:53 25 right?

1 A. Yes.

2 Q. And overlapping days supply means that the patient  
3 has at least two prescriptions with at least one day of  
4 overlap between the two, right?

13:35:03 5 A. Yes.

6 Q. So let me give you an example.

7 If Doctor A, say he's a family  
8 practitioner, writes a patient a prescription for  
9 Hydrocodone on January 1st, and that prescription is for  
10 a three-day supply, that prescription should last until  
11 January 3rd, right?

12 A. Or January 4th.

13 Q. Okay. January 4th. Right?

14 A. Yes.

13:35:26 15 Q. And if Doctor B, let's say she's a surgeon, writes  
16 the same patient another prescription for a seven-day  
17 supply of Hydrocodone on January 3rd, that would be an  
18 overlapping day's supply and your flag would trigger,  
19 right?

13:35:42 20 A. If the patient filled that prescription on January  
21 3rd or 4th, yes.

22 Q. But if the pharmacist knows that patient and the  
23 pharmacist knows the doctors involved, that isn't really  
24 a cause for concern, correct?

13:35:56 25 A. No, it is a cause for concern.

1 Q. Let me ask you a few other questions about the  
2 so-called doctor shopping.

3 Under your red flag methodology, you flag  
4 descriptions as doctor shopping when the patient visits  
13:36:13 5 multiple prescribers within the same practice or clinic,  
6 correct?

7 A. Correct.

8 Q. You view that as doctor shopping?

9 A. That's one of the variations of doctor shopping  
13:36:26 10 that could be possible.

11 And again, if the patient is seeing  
12 practitioners and practitioners rotate patients within  
13 that clinic, and that's documented on the prescription,  
14 that resolves the red flag, and the red flag is gone.

13:36:38 15 But lacking that information, you don't  
16 know if the person is actually seeing multiple persons in  
17 that practice or actually under the type of a  
18 multiple-practice setting that I just described.

19 Q. So I just want the jury to be clear that they  
13:36:52 20 understand what you mean by doctor shopping.

21 So if a patient goes to a small practice  
22 where there are two doctors and that patient sees both  
23 doctors, that's doctor shopping under your definition,  
24 correct?

13:37:02 25 A. If the doctors don't know that the patient is

1 seeing both doctors and if the doctors aren't aware that  
2 they're both writing prescriptions for opioids or  
3 controlled substances for the same patient, then, yes, it  
4 would be.

13:37:13 5 Q. Let's look at an actual example of a prescription  
6 that you reviewed, and I'm about to call it a Tab Number,  
7 and I think it's going to be wrong based on my last  
8 experience. So it's, I believe, if my Tab 1 was your Tab  
9 6, I'm adding five, so let's try Tab 9.

13:37:51 10 A. Are you going to put that up on the screen as well?

11 Q. I will. I'm trying to see if my guess was write on  
12 the tabbing.

13 A. I'm not sure that the one, the identification  
14 number, WMT-MDL-01343\_0501?

13:38:20 15 Q. Yes. See, it's Tab 4 in my binder. Thanks.

16 And for the record, I'm not sure if you  
17 just said in the Bates Number or not, but it's been  
18 marked as Defendant's Exhibit WMT-MDL-01343.

19 Do you recognize this document,

13:38:57 20 Mr. Catizone?

21 A. Yes.

22 Q. And this is a document that you relied on to  
23 formulate your opinion, correct?

24 A. Correct.

13:39:05 25 Q. And I'll represent to you that this particular

1 prescription in your report flagged for red flag three  
2 because this patient was dispensed an opioid prescription  
3 with overlapping days of supply written by two or more  
4 prescribers.

13:39:26 5 So let's take a look at this prescription  
6 and then we can describe it for the jury.

7 This prescription -- well, let me back up  
8 for a second and just so the jury understands, there is  
9 redacted PHI information on this particular prescription.

13:39:43 10 And you understand, Mr. Catizone, that  
11 prescriptions contain sensitive patient information and  
12 that the defendants in this case have redacted that  
13 information to protect the patient's privacy, correct?

14 A. Correct.

13:40:00 15 MR. WEINBERGER: Your Honor, can we tell  
16 the jury that PHI stands for personal health information?

17 THE COURT: I was going to suggest that.

18 Is that correct, Doctor, PHI is personal  
19 health information?

13:40:09 20 THE WITNESS: Personal health or protected  
21 health information.

22 THE COURT: Okay. Thank you.

23 MS. FUMERTON: Thank you, Dr. Catizone.

24 BY MS. FUMERTON:

13:40:17 25 Q. So you can see this prescription was written from a

1 prescriber with the University Hospitals Seidman Cancer  
2 Center, and I apologize, I'm actually from Chicago, too,  
3 so if I butchered that name, I apologize.

4 THE COURT: It's Seidman.

13:40:37 5 MR. WEINBERGER: Seidman.

6 MS. FUMERTON: Thank you, Your Honor.

7 THE WITNESS: I'm sorry?

8 BY MS. FUMERTON:

9 Q. I'm sorry, I apologize. I'll reask my question and  
13:40:51 10 hopefully get the pronunciation right.

11 This is a prescription -- how about I just  
12 ask you, Dr. Catizone? From whom was this prescription  
13 written or by whom was this prescription written?

14 A. I would defer to the Judge.

13:41:04 15 Q. He's up on the pronunciation. I was asking a more  
16 substantive question, which is this prescription was  
17 written from a prescriber with the University Hospitals  
18 Seidman Cancer Center, correct?

19 A. That's what the prescription says, yes.

13:41:17 20 Q. And you have no reason to doubt that, correct?

21 A. Not knowing the area, not knowing the prescriber,  
22 from my perspective, I couldn't ascertain that for  
23 certain, but I will make that as an assumption.

24 Q. But a local pharmacist would know, right?

13:41:30 25 A. That's what I was just saying. I'm not a local

1 pharmacist and I'm not familiar with that, but I would  
2 make that assumption.

3 Q. And you're not a local pharmacist, yet you were  
4 giving your opinion on the legitimacy of all of these  
13:41:44 5 hard copy prescriptions you wrote, correct?

6 A. Correct.

7 Q. And there's a diagnostic code on this prescription,  
8 right?

9 A. Correct.

13:41:54 10 Q. And let's see if we can blow it up. It's kind of  
11 small.

12 And the diagnostic code reads C 34.12.

13 Right?

14 A. That's what it reads.

13:42:07 15 Q. And are you aware of what that diagnostic code  
16 indicates?

17 A. No.

18 Q. Are you familiar with ICD 10 codes?

19 A. Yes, I am.

13:42:16 20 Q. Can you please explain to the jury what they are?

21 A. What doctors do is they have a system of codes  
22 called ICD 9 codes and they use that for billing  
23 purposes. So when a doctor treats you, they have to put  
24 that code in.

13:42:32 25 It identifies what the diagnosis was and

1 then also determines in some cases how much the doctor  
2 will be reimbursed from the insurance companies.

3 Q. And it also indicates to the pharmacist what the  
4 prescriber's diagnosis of that patient was, correct?

13:42:48 5 A. Not in all cases because most prescriptions don't  
6 contain a diagnosis and pharmacists are not familiar with  
7 the diagnosis codes as well as physicians are.

8 So for some pharmacists, yes, but for  
9 others, it may not be.

13:43:03 10 Q. Okay. But you don't know what the knowledge of the  
11 pharmacists in this local area are with respect to the  
12 diagnostic codes, correct?

13 A. Correct.

14 Q. And I'll tell you, I looked this up, and I'm not a  
13:43:16 15 doctor or pharmacist either, but it was malignant  
16 neoplasm of upper lobe, left bronchus or lung.

17 Do you have any reason to dispute that?

18 A. No.

19 Q. Do you understand what that means?

13:43:27 20 A. Yes, I do.

21 Q. And in laymen's terms, what does it mean?

22 A. Lung cancer.

23 Q. So this is a patient who was diagnosed by their  
24 doctor with lung cancer, correct?

13:43:36 25 A. Correct.

1 Q. And this prescription was written on February 22nd,  
2 2018, right?

3 A. It's hard to read, but yes, that's the date.

4 Q. It is hard to read and I apologize for that but we  
13:43:55 5 are pulling it up on the screen. If you can toggle back  
6 between the two, it might help.

7 A. Yeah.

8 Q. And the pharmacist wrote notes on this  
9 prescription, right?

13:44:04 10 A. Yes.

11 Q. And you saw these notes when you were reviewing  
12 this prescription and issuing and formulating your  
13 opinions, right?

14 A. Correct.

13:44:14 15 Q. And again, we'll blow it up. It's a little hard to  
16 read, but it says "Aware of the script on January 29th,  
17 2018. Okay to fill. February 22nd, '18, per Dr. Daniel  
18 Silverberg."

19 Correct?

13:44:34 20 A. Correct.

21 Q. So on this prescription, the pharmacist  
22 identified -- oh, and I apologize. I skipped one of the  
23 notes.

24 So if you look above that, it also  
13:44:50 25 states -- oh, I'm sorry. I did read that.

1 "Is aware of the script on January 29th,  
2 2018, okay to fill, February 22nd, '18, per Dr. Daniel  
3 Silverberg."

4 So on this prescription, the pharmacist  
13:45:04 5 identified that there was another prescription for this  
6 patient, contacted the prescriber, documented the  
7 discussion with the prescriber, knew the patient saw an  
8 oncologist, knew the patient was diagnosed with lung  
9 cancer; yet, it's your opinion that this prescription  
13:45:20 10 should not have been filled, correct?

11 A. My opinion was it didn't have adequate  
12 documentation and I could explain if you'll allow me to.

13 Q. Well, your counsel can ask you additional questions  
14 if he wants, but I don't think that quite answered my  
13:45:34 15 question.

16 It's your opinion that this prescription  
17 should not have been filled, correct?

18 A. Until the red flags were resolved, correct.

19 Q. And in your opinion, the red flags were not  
13:45:43 20 resolved so in your opinion this prescription should not  
21 have been filled, correct?

22 A. Correct.

23 Q. Let's talk about your red flag four.

24 Can we put that Elmo back up?

13:46:04 25 And your red flag four is designed to

1 identify patients who received prescription with  
2 overlapping days of supply at two or more pharmacies,  
3 right?

4 A. Yes.

13:46:19 5 Q. And we just talked about what overlapping days of  
6 supply means.

7 A. Yes.

8 Q. And you agree that this red flag triggers when  
9 there's even one day of overlap between two prescriptions  
13:46:31 10 a patient receives, correct?

11 A. Correct.

12 Q. Meaning if the patient fills their prescription the  
13 day before, they run out of medication, it would flag  
14 under your methodology, correct?

13:46:42 15 A. For the opioids and other controlled substances  
16 I've looked at, yes.

17 Q. And the second part of this red flag is that the  
18 patient filled the prescription at two or more  
19 pharmacies, right?

13:46:57 20 A. Correct.

21 Q. And there are lots of reasons a prescription might  
22 be filled at different pharmacies, right?

23 A. Yes, and I gave some of those reasons yesterday.

24 Q. For instance, a patient might fill an initial  
13:47:11 25 prescription near the doctor's office and a second

1 prescription near their home, right?

2 A. That was one of the examples, yes.

3 Q. Or they may fill one prescription near their home  
4 and another near where they work, right?

13:47:22 5 A. That was another example, yes.

6 Q. Okay. So I'm now going to try to talk about a  
7 series of these flags together and specifically red flags  
8 five through eight.

9 And without having to go through each one,  
13:47:45 10 you recall that each of them involve -- each red flag,  
11 red flag five, six, seven and eight, all involve  
12 prescriptions for an opioid and then some other  
13 medication, either a muscle relaxer, a Benzodiazepine or  
14 both, right?

13:48:03 15 A. Yes, but I'm not sure that the jury will remember  
16 that so if we're speaking about a specific red flag,  
17 maybe you can put that up so we're talking and the jury  
18 is aware of which one we're talking about, please.

19 Q. Okay. We'll go through each one of them but they  
13:48:19 20 all involve sort of that same concept, right?

21 So red flag five, the patient was dispensed  
22 an opioid, a Benzodiazepine, and a muscle relaxer for  
23 overlapping days of supply.

24 Red flag six is a patient was dispensed an  
13:48:33 25 opioid, a Benzodiazepine, and a muscle relaxer on the

1 same day and all the prescriptions were written by the  
2 same prescriber.

3 A. Yes.

4 Q. Correct?

13:48:40 5 A. Yes.

6 Q. And red flag seven is designed to flag an time an  
7 opioid and a Benzodiazepine were dispensed to a patient  
8 within 30 days of one another. And red flag eight is  
9 designed to flag any time a pharmacist dispensed an  
10 opioid and a Benzodiazepine on the same day and all the  
11 prescriptions were written by the same prescriber.

12 Correct?

13 A. Yes. Thank you.

14 Q. And you agree with me that a muscle relaxer is a  
13:49:15 15 medication that helps relax a muscle when it's in spasm,  
16 correct?

17 A. That's why it's called a muscle relaxant, yes.  
18 Sorry.

19 Q. Thank you, Mr. Catizone. You never know. Probably  
13:49:28 20 could have been obvious to some but as I said, I'm not a  
21 doctor or pharmacist so I just want to make sure  
22 everybody understands.

23 And a Benzodiazepine is a medication that's  
24 often prescribed to treat anxiety-related conditions,  
13:49:41 25 correct?

1 A. Correct.

2 Q. And an opioid, a muscle relaxer and a  
3 Benzodiazepine all treat different symptoms, correct?

4 A. There is some overlap between the three medications  
13:49:55 5 and the effect they have because all three medications  
6 involve the central nervous system and depressing  
7 responses from the central nervous system so they could  
8 have a cumulative and overlapping effect.

9 Q. But the reason for prescribing them is to treat  
13:50:13 10 different conditions oftentimes, correct?

11 A. If I can ask, if you asked a patient does their  
12 back hurt, treating their back pain, then you could  
13 prescribe any of those three because all three treat back  
14 pain.

13:50:28 15 Q. So you might have an option to do one of the  
16 multiple medications for the same treatment but you could  
17 also use the medications to treat for different things;  
18 so, for example, if somebody is in a lot of pain, has an  
19 upcoming surgery and has anxiety, you would give them two  
13:50:42 20 different medications, correct?

21 A. That was one of the examples we talked about  
22 yesterday, about giving a Benzodiazepine and an opioid,  
23 depending upon the circumstances.

24 Q. And the four flags we just looked at, and I don't  
13:50:55 25 know if there is going to be a way for me to get all of

1 these up here, I'm not skilled on this as -- let's  
2 see -- Mr. Lanier is -- but how you structured these  
3 oftentimes, if they flag one, they'll flag another,  
4 correct?

13:51:20 5 One prescription will hit multiple ones of  
6 these flags, right?

7 A. The red flags five and six would just indicate that  
8 both those occurrences happen for the same prescription.

9 The same with seven and eight, but five,  
13:51:35 10 six, seven and eight would not all show at the same red  
11 flag.

12 Q. But the five and six could, right? So you have one  
13 prescription, the exact same issue, but you're counting  
14 it as flagging twice, correct?

13:51:46 15 A. Correct.

16 Q. Okay. Let's look at another prescription.

17 So, Steve, this is Tab 3 in my binder and I  
18 believe it's going to be Tab 8 in your binder,  
19 Mr. Catizone. We'll pull it up on the screen to help  
13:52:09 20 orient you, too.

21 For the record, this document is  
22 Defendant's Exhibit WMT-MDL-01343.

23 A. Excuse me, ma'am. I think that's the same  
24 prescription you put up earlier.

13:52:38 25 Are you back to the same one? Because

1 that's the one we just went through, I think. We just  
2 discussed that prescription and you said on redirect I  
3 could explain my process for this prescription.

13:52:57

4 Q. Okay. I'm not seeing the screen very well so let  
5 me make sure that I've got it right.

6 A. Okay.

7 Q. Is this the prescription -- could we put up the  
8 Elmo for a second?

13:53:15

9 Okay. So I don't think that we did just  
10 look at this prescription. So this is the one we talked  
11 about earlier, correct, Mr. Catizone.

12 A. I --

13 MR. WEINBERGER: There was one before that.

13:53:26

14 A. There was one before that, the hospice patient that  
15 was mentioned.

16 The 0501, that was entered into the record.

17 Q. Right. So I'm looking at the one that's on the  
18 screen. So did we talk about that one before?

19 A. We talked about both of these.

13:53:39

20 Q. Okay. So you looked at this one and we looked at  
21 this one?

22 A. Yes, I did.

23 Q. Okay. And so this particular prescription, just to  
24 make sure the record is clear because I might have messed  
13:53:49 25 it up, for WMT-MDL-01343, this is for a hospice patient,

1 correct?

2 A. Which -- that's not the one on the screen, though,  
3 is it?

4 THE COURT: Well, I have 1343 as the  
13:54:07 5 hospice patient, what, UH Seidman Cancer Center, lung  
6 cancer.

7 A. So there's two 01343s. There's a 0501 and now  
8 there's a 0241.

9 Which one are you referring to, please?

13:54:28 10 Q. So I'm looking at the one that's 0501 with the  
11 hospice patient.

12 A. Okay.

13 Q. Do you see that?

14 A. Yes.

13:54:35 15 Q. Okay. And did we discuss -- you looked at this one  
16 earlier?

17 A. I thought you had it up on the screen, but I may be  
18 mistaken.

19 Q. Okay. So let me just clarify because I think the  
13:54:48 20 record might not be clear, but this is one of the hard  
21 copy prescriptions that you reviewed, correct?

22 A. Yeah, I think what you did is you showed this  
23 prescription and then may have represented that the other  
24 prescription was part of this prescription, when they're  
13:55:01 25 actually two separate prescriptions.

1 Q. They are absolutely two separate prescriptions. So  
2 to the extent I was confusing about that, I apologize so  
3 let's quickly clear this up and we will go through  
4 quickly.

13:55:13 5 So for the record -- and why don't we pull  
6 this one up on the screen.

7 So I'm looking at WMT-MDL-01343-0501 and on  
8 top of this, this is hospice patient with two underlines,  
9 correct?

13:55:30 10 A. Correct.

11 Q. And if you take a look at the information on the  
12 right side midway down the patient, there's a  
13 pharmacist's note. And can you read what that says right  
14 above the redacted PHI?

13:55:48 15 Does it say hospice?

16 A. I think it says hospice. It's hard to read.

17 Q. Okay. Great.

18 And that's circled, right?

19 A. Yes.

13:55:56 20 Q. So not only did the prescriber indicate that the  
21 prescription was for a hospice patient but the pharmacist  
22 saw that note, right?

23 A. Yes, ma'am.

24 Q. Okay. And if you look at the date of the birth,  
13:56:06 25 this particular patient was born in 1936, right?

1 A. Yes, ma'am.

2 Q. And it was this prescription was written on  
3 December 18th, 2013, correct?

4 A. Yes, ma'am.

13:56:16 5 Q. So based on this prescription, you'd agree that the  
6 patient is probably about 77 years old at the time that  
7 this was written, right?

8 A. Yes, ma'am.

9 Q. And, Mr. Catizone, if you look at the  
13:56:29 10 prescription -- the prescribers direction for use, it  
11 says take 2.5 milliliters teaspoon by mouth every hour  
12 for shortness of breath or pain as needed.

13 Is that right?

14 A. Yes.

13:56:42 15 Q. So, Mr. Catizone, on the face of this prescription,  
16 the pharmacist was able to identify that this patient was  
17 77 years old in a hospice program and that the prescriber  
18 told the patient to take the medicine for shortness of  
19 breath, correct?

13:56:56 20 A. Yes.

21 Q. Okay. And despite all of that, Mr. Catizone, it's  
22 your opinion that Walmart's documentation on its  
23 prescription was insufficient, correct?

24 A. I can't answer that question completely because I  
13:57:15 25 don't know what other red flags were associated with this

1 prescription, which was how I reviewed these  
2 prescriptions.

3 My immediate concern looking at the  
4 prescription is that Morphine is a -- is a breathing  
13:57:27 5 depressant, and if this patient is 76 years old and given  
6 something that's going to depress their breathing, that  
7 would be a concern, and so I would also look at that from  
8 a clinical standpoint but I would need to see if there  
9 were other red flags associated with this prescription,  
13:57:44 10 perhaps another opioid, that would further depress that  
11 person's breathing and put that patient at risk and  
12 that's why I would say there's not adequate documentation  
13 until I could review the entire spreadsheet for this  
14 prescription.

13:57:55 15 Q. Okay. And I can represent to you this flagged on  
16 your red flags seven and eight.

17 And just as a reminder, that that is that a  
18 patient was dispensed an opioid and a Benzodiazepine.

19 Can we put up the Elmo? Thank you.

13:58:13 20 A. So we have a prescription now that simply says  
21 76-year-old patient, hospice, we have a red flag that  
22 says that patient was also prescribed a Benzodiazepine,  
23 and they received that Benzodiazepine -- those  
24 medications at more than one pharmacy.

13:58:29 25 Q. Right. So looking at what this is, well, no, red

1 flag number seven is that the patient was dispensed an  
2 opioid and a Benzodiazepine within 30 days of another,  
3 right?

4 A. Right. I was confusing five and six, but what it  
13:58:47 5 says then is the patient received an opioid and a  
6 Benzodiazepine within 30 days so there's overlap, and  
7 it's from the same prescriber.

8 Again, the same concerns, you have a  
9 76-year-old woman suffering from cancer getting two  
13:59:06 10 medications that's going to depress her breathing which  
11 is already in a compromised state.

12 When I reviewed that, I didn't know what  
13 that other prescription was that triggered that  
14 Benzodiazepine red flag, and there's no notes on there  
13:59:17 15 from the pharmacist indicating that it's safe to give  
16 both prescriptions.

17 Simply the notation that you see, and that  
18 the patient is a hospice patient.

19 In some cases, that could be used to  
13:59:30 20 euthanize the patient by stopping the patient's breathing  
21 so that's why I didn't have enough information and I  
22 didn't think the information was enough to document that  
23 that prescription should be dispensed.

24 Q. And so you think this hospice patient shouldn't  
13:59:42 25 have received their medication unless all those steps

1 were taken, correct?

2 A. As I've said, until those red flags were resolved  
3 and you could say the patient was safe, then they  
4 shouldn't be dispensed.

13:59:54 5 But once they were resolved, if they were  
6 resolved and the patient was safe, then you should  
7 dispense the prescription.

8 Q. And in your mind, if you were presented as a  
9 pharmacist a prescription where you confirmed it's a  
14:00:06 10 hospice patient, they're receiving an opioid and a  
11 Benzodiazepine perhaps for anxiety being a hospice  
12 patient, you would think that that has red flags that  
13 would require you to do additional investigation and  
14 document, even if you knew the patient and you knew the  
14:00:25 15 prescriber, correct?

16 A. Correct. As a pharmacist and a caregiver, yes.

17 Q. And so every time this hospice patient comes in,  
18 this hospice patient that you know and you know the  
19 doctor, you think you have to call the doctor, get  
14:00:42 20 confirmation once again, document, and in the meantime  
21 hold back that medication until you've taken all those  
22 steps and documented it, correct?

23 A. No. But you said the key word there, you said  
24 document.

14:00:55 25 If that was documented in the prescription,

1 that I knew the patient, that these medications were  
2 safe, then I would never have to ask those questions  
3 again and I could dispense it and any pharmacist after me  
4 could dispense that prescription as well.

14:01:08 5 Q. So how do you know the other prescription didn't  
6 have those notes on it?

7 A. I -- if you have the other prescription, I'd be  
8 glad to look at it at this point but just looking at this  
9 prescription and knowing that it had all those red flags  
14:01:20 10 and there was another prescription written for it, I'd  
11 like to see the other prescription.

12 Q. So you don't know one way or the other because you  
13 don't think you had enough information, correct?

14 A. No. I responded that based upon the red flags  
14:01:31 15 identified with this prescription and the concerns that I  
16 had for the patient and the other documentation that  
17 would be needed to justify and resolve flags five and  
18 six, that I couldn't, couldn't dispense it until red  
19 flags five and six were resolved.

14:01:47 20 Q. But to be clear, Mr. Catizone, the pharmacist who  
21 looks like they've initialed this, knows whether they  
22 know the patient, knows what that other prescription  
23 said, knows what perhaps who the doctor is, and  
24 apparently felt that in their professional opinion it was  
14:02:16 25 okay to dispense.

1 Correct?

2 A. I -- I can't make that assumption because I don't  
3 know what the pharmacist was thinking.

4 My -- my chore was to review these  
14:02:25 5 prescriptions from what would be the required  
6 documentation and what documentation would be adequate  
7 for some other pharmacist or some regulator to look at  
8 and be able to justify or determine that those red flags  
9 are resolved.

14:02:40 10 On that basis, I would say that it wasn't  
11 adequate documentation.

12 Q. Because you would want more information and you  
13 don't think you have all the information because you  
14 don't know what the pharmacist knew, right?

14:02:49 15 A. Correct.

16 Q. Okay. I want to talk about red flags 10 and 11,  
17 and I'm actually going to use the slides that Mr. Lanier  
18 used because I think I'm a little bit confused.

19 So yesterday you were asked about red flag  
14:03:14 20 number 10, correct?

21 A. Yes.

22 Q. And that's the patient was dispensed an opioid  
23 prescription of over 200 MME per day before 2018 or over  
24 90 MME per day after January 1st, 2018.

14:03:29 25 Correct?

1 A. Correct.

2 Q. And red flag number eleven is that the patient was  
3 dispensed an opioid prescription of over 200 MME per day  
4 before 2018 or over 900 -- I'm sorry -- over 90 MME per  
14:03:48 5 day after January 1st, 2018, correct?

6 A. Correct.

7 Q. What's the difference between those two flags?

8 A. I apologize, because I forgot some of the facts and  
9 some of the background, so at some point, the CDC and  
14:04:03 10 medical standards say that you shouldn't prescribe over  
11 50 MMEs and so the data was analyzed for 50 MMEs and then  
12 after January of 2018, again, they revised it to 90 MMEs.

13 So in changing standards from the CDC on  
14 what's an appropriate daily dose of opioids and in my  
14:04:23 15 testimony yesterday it was confusing to remember that it  
16 changed a couple times instead of just once, so my  
17 apologies.

18 Q. I think your testimony might be confused today  
19 unless I'm not following.

14:04:32 20 What's the difference between number 10 and  
21 number 11?

22 A. 40 -- the difference was that it was 50, and the  
23 error I made yesterday was saying that that 50 should be  
24 90, where it should be 50 instead of 90.

14:04:48 25 So number 10 should be 50, not 90.

1 Q. So that's how this is supposed to read?

2 A. Correct.

3 The original.

14:05:03

4 Q. And so this is another example, though, where you  
5 have two different flags, though, that potentially flag  
6 the same prescription for the same reason, correct?

14:05:18

7 A. I don't think so, because there were dates where  
8 the MMEs were evaluated based upon what the standard was  
9 at the time, so I don't think that would happen, but I  
10 can't say for certain.

11 Q. But if a patient, if we're looking at a  
12 prescription prior to 2018 that was over 200 MME, it  
13 would flag twice under both 10 and 11, correct?

14 A. For the 50 and the 90, yes.

14:05:46

15 Q. And for the 200, if it was before 2018, you would  
16 be docking the defendants twice for the exact same issue,  
17 correct?

18 A. No. No.

14:05:59

19 What number 10 says is if it was 200 -- if  
20 it was higher than 200 MMEs before January of 2018, then  
21 that would have been flagged as a red flag.

22 After 2018, if it was 50 MMEs, they would  
23 be zinged as a red flag. So anyone that received 60  
24 would be zinged, but anybody under that number, and the  
14:06:25 25 same with the 90 --

1 Q. Right.

2 So here's my hypothetical. It's before  
3 2018, it's 2017. Okay? Are you following me?

4 A. So far.

14:06:32 5 Q. Okay. And the prescription was for over 200 MME,  
6 correct?

7 A. Correct.

8 Q. It would flag both 10 and 11.

9 You're counting that as two violations of  
14:06:46 10 your red flag rules, correct?

11 A. No, I think in putting the slides together, it  
12 would only be flagged once.

13 And I think there a was time period in  
14 January -- or in 2018 where it changed from 50 to 90, so  
14:07:01 15 those prescriptions prior to that, if they were less than  
16 90, less than 50, wouldn't have been, but then when it  
17 changed, they would have been flagged.

18 Q. And you just described that your 50 and 90 MME dose  
19 limits were based on CDC's guidelines in prescribing  
14:07:26 20 opioids for chronic pain, correct?

21 A. Chronic pain and the possibility for addiction and  
22 abuse.

23 Q. Okay. So the CDC guidelines that you're referring  
24 do not apply to opioids that are prescribed for acute  
14:07:40 25 pain, correct?

1 A. I -- I'd have to see the guidelines.

2 Q. You don't know?

3 A. I don't remember exactly.

4 Q. Okay. And they also don't apply to cancer

14:07:48 5 treatment, palliative care or end-of-life care, do they?

6 A. Again if you have that document there, I'd be glad  
7 to look at it and refresh my memory.

8 Q. Yeah, but in your expert opinion, you can't recall  
9 what the CDC guidelines say with respect to the subject?

14:08:01 10 A. Not here at this moment.

11 Q. And the CDC guidelines also only apply to primary  
12 care physicians, right?

13 A. Again, I would like the opportunity to review that  
14 document to make sure, but I can't recall at this moment  
14:08:18 15 what I reviewed prior to the case.

16 Q. Okay. But we'll probably be discussing these  
17 guidelines some more later on in this case, but with  
18 respect to your methodology, you applied those guidelines  
19 to any doctor and for any condition, acute or chronic,  
14:08:40 20 correct?

21 A. No.

22 When I conducted my analysis, I had the CDC  
23 guidelines in front of me, and I used those guidelines in  
24 instructing how those red flags should be analyzed.

14:08:52 25 I don't have that document here to respond

1 or remember everything I saw, but at the time. I would  
2 have had that document in front of me and used that as a  
3 reference material.

14:09:08 4 Q. So that's what you instructed Dr. McCann to do when  
5 he was applying these red flags to look at what the CDC  
6 guidelines actually say and apply your red flags in that  
7 way?

8 A. In the communications that may have -- that  
9 occurred, the information would have been conveyed back  
14:09:20 10 and forth. If the CDC guidelines changed at this point  
11 and this is the red flag I would be looking for in the  
12 MME totals.

13 Q. And so if the CDC guidelines do not apply to  
14 prescribing opioids for acute pain, you would not, under  
14:09:33 15 your methodology, want your red flags to flag, correct?

16 A. Again when the methodology was performed, I used  
17 the CDC guidelines as a reference and if it didn't  
18 pertain, then it would not have been included in the red  
19 flag analysis.

14:09:52 20 Q. Your red flags 12 and 13 address pattern  
21 prescribing, correct?

22 A. I believe so, but again, if you could put those on  
23 the screen it would --

24 Q. Okay. You can't remember what your red flags 12  
14:10:05 25 and 13 are?

1 A. Oh, I remember but I want to make sure the jury  
2 did.

3 Q. Could you just describe for us what are red flags  
4 12 and 13?

14:10:13 5 A. Sure.

6 Q. Oh, look, if you have to look it up, I'll put it on  
7 so we're all doing it at the same time.

8 Mine are two different pages. So this is  
9 red flag 12, which is an opioid was dispensed to at least  
14:10:46 10 four different patients on the same day but the opioid  
11 prescriptions were for the same base drug, strength,  
12 dosage, form and were written by the same prescriber,  
13 right?

14 A. Yes.

14:10:55 15 Q. And you call that pattern prescribing, correct?

16 A. Yes.

17 Q. And 13 was an opioid was dispensed to at least  
18 three different patients within an hour and the opioid  
19 prescriptions were for the same base drug, strength,  
14:11:09 20 dosage, form, and were written by the same prescriber,  
21 correct?

22 A. Correct.

23 Q. And again, that's pattern prescribing?

24 A. Yes.

14:11:14 25 Q. Doctors often have specialties, correct?

1 A. I'm sorry, I didn't hear the question.

2 Q. I apologize.

3 Doctors often have specialties, correct?

4 A. Yes.

14:11:28 5 Q. And a prescriber who specializes in a condition  
6 will often see patients with similar conditions, right?

7 A. Yes. As we discussed yesterday, there may be some  
8 prescriptions for patients of a specialist or a dentist,  
9 but there would be some variation, based upon patient  
14:11:47 10 differences and the other medications they've taken.

11 Q. There could be or there could not be, right?

12 A. Yes.

13 Q. And, for example, a surgeon might schedule multiple  
14 patients for the same type of surgery in a day, right?

14:12:01 15 A. That was one of the examples I gave yesterday as  
16 well.

17 Q. And if multiple patients all receive the same type  
18 of surgery for the same condition on the same day, they  
19 might all need the same type of medication, right?

14:12:13 20 A. Hypothetically. But realistically, maybe not.

21 Q. But maybe they could, right?

22 A. Anything's possible, yes.

23 Q. Well no, not just anything's possible,

24 Mr. Catizone.

14:12:21 25 It's -- when you have a doctor who is, for

1 example, doing surgery on knees, they oftentimes will  
2 prescribe the same type of medication to the same type of  
3 patients, right?

14:12:37 4 A. Right. But as I described yesterday to answer the  
5 question, if one of those patients has diabetes or one of  
6 those patients is allergic to the particular medication  
7 that the doctor normally prescribes, they wouldn't all  
8 get the same medication. So I can't make the  
9 generalization that a surgeon is going to write the same  
14:12:51 10 medications for every single patient they see.

11 That's not a statement that I feel  
12 comfortable making as a pharmacist.

13 Q. Okay. But the opposite's true, too.

14 If there's not some sort of specific issue  
14:13:05 15 with a patient, it wouldn't be uncommon to see multiple  
16 patients being prescribed the same dosage for the same  
17 type of condition, correct?

18 A. Correct.

19 But the chance of seeing the same patients  
14:13:14 20 with the same conditions within the same hour seem very  
21 unlikely.

22 Q. Let's talk about that.

23 So you specifically pointed to, I think,  
24 where Mr. Lanier circled and said time, right?

14:13:32 25 A. Correct.

1 Q. Okay. I think we talked earlier, you didn't  
2 actually do these calculations, you relied on Dr. McCann,  
3 right?

4 A. Correct.

14:13:41 5 Q. Do you know how Dr. McCann calculated that, if he  
6 didn't have data saying what time the prescription was  
7 filled?

8 A. I don't know how he calculated it, but I know that  
9 on the reports that I saw, there were time dates on  
14:13:56 10 those, on that at that time.

11 Q. So you would be surprised to learn if he had  
12 calculated those all using the exact same hour, correct?

13 A. Again, I didn't conduct analysis so I don't know  
14 what Dr. McCann used or how he calculated. I simply put  
14:14:13 15 the light on the data.

16 Q. Yeah, but you didn't expect him to do that based on  
17 your flag because you said the time is important, right?

18 A. I'm sorry?

19 Q. Well, did you expect him when you asked him to run  
14:14:22 20 your analysis to apply the same hour for all of the  
21 prescriptions where that information was otherwise  
22 unpopulated?

23 A. What I expected Dr. McCann to do is to make sure  
24 that the data analysis for each of the defendants used  
14:14:37 25 the same variables, the same factors, so that it was

1 apples-to-apples and oranges-to-oranges and not to use  
2 different parameters or different variables that would  
3 confound the data.

4 But I left that to Dr. McCann and his  
14:14:49 5 specialty.

6 Q. And so it's okay with you if he had just filled in  
7 for a large percentage of prescriptions that they were  
8 all filled at noon, right?

9 A. That's making the assumption that Dr. McCann did  
14:15:01 10 not do this professionally and would compromise standards  
11 and I can't make that, but I don't believe that that  
12 occurred and I would not have relied on the data if I  
13 suspected that at all.

14 Q. And you think that if he had done that, that would  
14:15:13 15 be compromising professional standards, correct?

16 A. I apologize for laughing, but I think anybody that  
17 doesn't follow what they're supposed to do, whether it's  
18 data analysis or prescriptions, would be compromising  
19 professional standards, but there's nothing I have to  
14:15:31 20 indicate that Dr. McCann did that.

21 Q. So you have nothing to indicate that he just  
22 substituted a single time period for a large percentage  
23 of times?

24 A. Again, I wasn't involved in the actual analysis of  
14:15:40 25 the data.

1 Q. Okay.

2 A. I just relied on what was provided to me but I did  
3 not suspect anything was inappropriate with the data.

4 Q. Let's talk about red flag number 15, a 210-day  
14:15:58 5 supply.

6 Do you know, Mr. Catizone, whether that  
7 would flag if a patient was just refilling a 30-day  
8 supply for six months?

9 A. Well, the first big problem with that hypothetical  
14:16:24 10 is that since most of the drugs we were talking about  
11 involved Schedule II controlled substances, Schedule II  
12 controlled substances cannot be refilled under federal  
13 and state law, so that would be a significant red flag if  
14 that pharmacist was refilling that Schedule II  
14:16:40 15 prescription.

16 Q. And you're right about that, and I used the term,  
17 if I used the term "refill," I apologize because that's  
18 not what I meant to say.

19 What I meant to say is if a patient is  
14:16:50 20 presenting a 30-day supply of a prescription and they're  
21 doing a new one every month, which is what's required for  
22 a Schedule II prescription, that would flag every time  
23 they are filling a 30-day prescription each month within  
24 a six-month period, correct?

14:17:10 25 A. As you recall from earlier, one of the DUR alerts

1 says it should be one-to-30 days. And again, I go back  
2 to if that pharmacist had documented that this was a  
3 patient that was going to require longer therapy because  
4 they were a cancer patient, then you wouldn't have to  
14:17:25 5 resolve that every single time it came up because it  
6 would be resolved and documented within the record.

7 Q. So the answer to my question was yes, it would flag  
8 every time, right?

9 A. Unless properly documented, yes.

14:17:35 10 Q. And it wouldn't just flag once. In my  
11 hypothetical, it flags six times because you're counting  
12 each prescription that was presented within that  
13 six-month period to be a separate flagged prescription,  
14 correct?

14:17:48 15 A. I don't know if that same -- that same  
16 prescription, it wouldn't, because that prescription  
17 number then would be present six times, which means it  
18 was refilled six times.

19 It would have to be six different or new  
14:18:02 20 prescriptions. And I'm not sure that -- so then it  
21 wouldn't be flagged, each one of those prescriptions  
22 would be flagged, but not six times.

23 Q. So in that hypothetical, that patient who's  
24 presenting a prescription each month for a three-day  
14:18:17 25 supply would get flagged six times under your

1 hypothetical, correct, or under my hypothetical?

2 A. Unless it was documented.

3 Q. Well, it would get flagged no matter, correct?

4 A. I'm lost in your hypotheticals because if those

14:18:33 5 prescriptions were in a data set, I don't think they

6 would have been counted six times, but I don't know

7 because you're giving me a hypothetical that I'm not sure

8 could actually take place.

9 Q. Let's talk about red flag 16 quickly, and that's

14:18:48 10 cash pay, right?

11 A. Correct.

12 Q. All right. So when you use the term cash, you

13 don't literally mean cash, right?

14 A. I'm sorry, yes, cash dollars.

14:19:04 15 Q. Okay. So what about credit card? And maybe my

16 question was unclear, I apologize if it was.

17 A. Oh, I'm sorry.

18 Credit cards, discount cards, anything

19 that's outside of insurance.

14:19:12 20 Q. Okay.

21 A. So I apologize.

22 Q. Yeah, so what --

23 A. I just say that because my children never carry

24 cash and so when I say do you have cash, they don't know

14:19:21 25 what cash is so I apologize.

1 (Laughter.)

2 Q. As I said, sometimes the question is too -- too  
3 basic to be asking.

4 So in this instance, when you use the term  
14:19:29 5 cash, you're using effectively noninsurance, correct?

6 A. Correct. Correct.

7 Q. So it would also flag people who are presenting a  
8 credit card?

9 A. Correct.

14:19:36 10 Q. Correct?

11 And then if somebody presents a credit  
12 card, then there's a record of who got that information,  
13 right?

14 A. There's not a record for the insurance company.

14:19:48 15 The only record would be with the credit  
16 card company.

17 Q. Well, right, because it's one of the main reasons  
18 that a person could present cash is because they have no  
19 insurance, correct?

14:19:56 20 A. Correct. That was one of the examples we talked  
21 about yesterday as well.

22 Q. And we can -- actually it's me that has to pull  
23 this down. Thank you.

24 So I just want to make sure that I'm clear  
14:20:22 25 about what your methodology does and does not do.

1                   Your red flag approach doesn't consider the  
2                   information that's available to the pharmacist relating  
3                   to the local area, correct?

14:20:40

4                   A.       If that information was documented on the  
5                   prescription, then I did consider it.

14:20:54

6                   Q.       But if it wasn't documented on the prescription,  
7                   so, for example, you have a pharmacist who's filling a  
8                   prescription for a long-term patient of theirs, you don't  
9                   expect to see every single prescription to have  
10                  documentation, right?

11                  A.       I would have expected to see at least one  
12                  documentation.

14:21:06

13                  Q.       But it could have been the first time they saw that  
14                  patient and not the sixth or seventh or eighth or ninth  
15                  times that they saw that patient, correct?

16                  A.       Correct. So in my analysis, when I said that the  
17                  overwhelming majority, that was some of the wiggle room I  
18                  left in saying maybe this was documented and they didn't  
19                  provide it in the records.

14:21:18

20                         There was room for exceptions within my  
21                  assessment of how many prescriptions actually had all the  
22                  documentation needed.

23                  Q.       But you just reviewed a sample, right?

14:21:31

24                         So if somebody had refilled several  
25                  prescriptions at a pharmacist and there could be

1 documentation on another prescription, you wouldn't know,  
2 right?

3 A. Right. But my task was to review the prescriptions  
4 that were provided to me by the defendants and make an  
14:21:44 5 assessment on those prescriptions.

6 I have no idea what happened outside of  
7 those prescriptions, and, therefore, I can't comment or  
8 make an assessment on that.

9 Based on what I reviewed, that's what I  
14:21:55 10 found. If there's other information, other prescriptions  
11 that occurred, other patient notes, it wasn't part of my  
12 analysis.

13 Q. Okay. Can we please pull up Mr. Catizone's  
14 supplemental report at Page 16, Footnote 48?

14:22:38 15 And, Mr. Catizone, this is an example of  
16 some electronic notes that you found with respect to a  
17 Walmart or with respect to a prescription that was filled  
18 by a Walmart pharmacy, correct?

19 A. Correct.

14:22:59 20 Q. Okay. And you think this documentation was  
21 inadequate, correct?

22 A. I'm rereading it, but, yes, based on what was in my  
23 report, yes.

24 Q. And this actually shows that the pharmacist was  
14:23:15 25 checking OARRS over a dozen times and documenting it,

1 right?

2 A. Shows that they verified with the doctor, the  
3 doctor/patient relationship, but it doesn't show or  
4 verify or document that flags the word shown about the  
14:23:50 5 combination of these prescriptions and why the patient  
6 was getting those medications.

7 Q. And so if you even look at the dates of these OARRS  
8 checks, do you see that this patient was coming to this  
9 particular pharmacy for over 10 years, right?

14:24:11 10 A. Correct.

11 Q. But this still is inadequate, inadequate  
12 documentation, right?

13 A. Again, when I looked at the prescriptions, I looked  
14 at all the red flags.

14:24:21 15 If you could pull up the spreadsheet with  
16 this prescription, I could see what the other red flags  
17 were that weren't documented or weren't covered by this  
18 note, and that would help me very much.

19 Q. I want to show you some of the prescription notes  
14:24:51 20 that Mr. Lanier walked through with you earlier today.  
21 So here's one example and I don't have the corrected  
22 version so I'm going to put that over.

23 This is again one of the examples that you  
24 showed insufficient documentation, correct?

14:25:38 25 A. Correct.

1 Q. What was the red flag on this prescription?

2 A. I don't know, but if you have the spreadsheet with  
3 this prescription, it will identify what the red flags  
4 are.

14:25:46 5 Q. Well, this was the example that you walked through  
6 with Mr. Lanier today, correct?

7 A. Correct.

8 Q. And so you're not suggesting that anything on here  
9 was a red flag, is that right?

14:25:55 10 A. Oh, no, I am suggesting that there are red flags in  
11 this, but I don't know what the specific red flags are  
12 beyond what I can deduct from this note.

13 Q. Okay. So when you were saying that this was  
14 insufficient to resolve the red flag, you can't recall  
14:26:10 15 what the red flag was that was at issue here, correct?

16 A. I can identify what the red flags, what one of the  
17 two red flags might be, but not specifically all the red  
18 flags.

19 Q. No, I'm just asking for this particular  
14:26:28 20 prescription where you said that the documentation was  
21 insufficient, if you could tell the jury what the red  
22 flag was.

23 A. Sure.

24 Q. And what is it?

14:26:36 25 A. One of the red flags is early refills. It's

1 specifically mention there.

2 Q. Well, let me stop you because I think my question  
3 must not have been clear.

4 I'm asking for this particular  
14:26:47 5 prescription, do you know why this particular  
6 prescription flagged your methodology?

7 A. So that's what I answered earlier, which was  
8 without seeing that prescription on the spreadsheet, I  
9 can't give you all the red flags, but clearly early  
14:27:02 10 refills must have been a red flag for that prescription  
11 because even the pharmacist noted that in their notes,  
12 but there was no documentation nor explanation of how  
13 that early refill came to be or how it was resolved.

14 And they still dispensed the prescription.

14:27:20 15 Q. And I think actually when you were testifying about  
16 this earlier, you said that you didn't know whether one  
17 of these prescriptions for this patient was not filled,  
18 correct?

19 In other words, that's a poor question, let  
14:27:34 20 me reask it.

21 You talked about how you would want to know  
22 why a pharmacist may have refused to fill one of these  
23 prescriptions, correct?

24 A. Correct.

14:27:43 25 And also the early refill, you asked the

1 question or gave the hypothetical earlier that if a  
2 patient filled it earlier, what would be wrong with that.

3 This is the type of documentation that that  
4 would have -- or situation that that documentation would  
14:27:57 5 have resolved, so again, I don't think there was adequate  
6 documentation on this early refill to know whatever  
7 happened and that would be one of the red flags.

8 Q. I think you're going on to another subject.

9 My question was about the refusals to fill  
14:28:09 10 and how you had wished you had reviewed refusal to fill  
11 documentation.

12 Did you review any of the refusal to fill  
13 documentation that Walmart produced in this case?

14 A. Did you ask if I reviewed the refuse to fill, the  
14:28:23 15 RTFs that Walmart has?

16 Q. Yeah, are you aware that Walmart produced  
17 information in this case relating to prescriptions that  
18 its pharmacists refused to fill?

19 A. I know that Walgreen's -- I mean, I'm sorry,  
14:28:35 20 apologize to both companies -- that Walmart had a program  
21 on refuse to fill, but I did not see any of that  
22 information in the materials that was provided to me.

23 Q. So if Walmart had produced it, but you didn't see  
24 that, that was because the plaintiffs' lawyers didn't  
14:28:51 25 give it to you?

1 A. I don't know why I didn't receive it, whether it  
2 was plaintiffs or defendants.

3 I don't know.

14:29:04

4 Q. All right. I want to switch subjects just for a  
5 brief moment, and you testified earlier about Walmart's  
6 fiscal year 2012 facility managed incentive plan.

7 Do you recall that testimony?

8 A. I recall the slide, yes.

14:29:28

9 Q. Okay. And is your testimony that it's not a good  
10 incentive to fill or that you should not incentivize  
11 filling opioids that should not be filled, is that right?

12 Let me ask the question even better because  
13 I butchered it that time, too.

14:29:47

14 It was -- you testified earlier that it's  
15 not good to incentivize filling opioid prescriptions that  
16 should not be filled, correct?

17 A. Correct.

18 Q. You also testified that's not good to put profits  
19 above patient care?

14:29:57

20 A. Correct.

21 Q. Correct?

22 You don't have any evidence in this case  
23 that that occurred with respect to any prescription that  
24 Walmart filled, correct?

14:30:08

25 A. In regard to what, please?

1 Q. Your testimony.

2 A. When I looked at the data and I saw that there were  
3 thousands of prescriptions that were dispensed without  
4 resolved red flags, that indicated to me that something  
14:30:28 5 happened that shouldn't have happened or something wasn't  
6 enforced that should have been enforced. I don't know if  
7 the rationale or reason for that was incentivizing the  
8 pharmacist to do that. I also don't know if Walmart  
9 encouraged people to, not to fill prescriptions that  
14:30:46 10 shouldn't have been refilled.

11 All I had to do was look at the data and  
12 there were thousands of prescriptions that should not  
13 have been dispensed until those red flags were resolved.

14 Q. So you don't know one way or another whether or not  
14:30:57 15 pharmacists were incentivized in the way that you  
16 testified earlier, correct?

17 A. Not specifically.

18 Q. Are you aware that controlled substance  
19 prescriptions were removed from the MIP script count  
14:31:15 20 metrics in fiscal year 2015 at Walmart?

21 A. I know when Mr. Lanier asked me questions about did  
22 these programs change over time, I indicated yes, that  
23 they did change.

24 So I'm not sure the specific dates, but I  
14:31:28 25 know that Walmart, Walgreen's and others did change some

1 of their policies, yes.

2 Q. Are you aware that Walmart's fiscal year begins on  
3 February 1st, so if they made the change for fiscal year  
4 2015, they actually made the change for February 1st,  
14:31:42 5 2014?

6 A. I didn't get involved in what the fiscal years were  
7 for various defendants, so, none of that was calculated.

8 Q. Okay. Switching subjects, I believe one of the  
9 first things you testified to actually when you were  
14:32:00 10 describing what NABP does, you testified that a third  
11 function of NABP is that it has the accreditation system  
12 where it accredits pharmacies, wholesale distributors,  
13 Internet sites to make sure they are in compliance with  
14 all state and federal laws and that they were not doing  
14:32:22 15 anything that would actually harm the public.

16 Do you recall that testimony?

17 A. Yes, I do.

18 Q. And one of the NABP distribution accreditation  
19 systems that NABP administers is called the Verified  
14:32:42 20 Accredited Wholesale Distributor accreditation, which is  
21 often referred to as VAWD, is that right?

22 A. Correct. That was its former name, it's now a new  
23 name but that's not really relevant.

24 Yes.

14:33:02 25 Q. And the defendants in this litigation each received

1 a VAWD accreditation from NABP, correct?

2 A. Correct.

3 Q. So at least from a policies and procedures  
4 standpoint, if the VAWD isn't giving accreditation, it is  
5 concluding that the distributor's policies and procedures  
6 --

7 THE REPORTER: I'm sorry. I'm sorry.  
8 Could you start that over?

9 MS. FUMERTON: Sure.

14:33:34 10 Q. So from a policies and procedures standpoint, if a  
11 distributor receives the VAWD accreditation, NABP is  
12 concluding that the distributor's policies and procedures  
13 are compliant with the Controlled Substances Act, right?

14 A. No.

14:33:52 15 Q. Okay. Let me ask a different question.

16 So from a policies and procedures  
17 standpoint, if the VAWD accreditation is given, then VAWD  
18 is concluding that the distributor's policies and  
19 procedures are compliant with the Controlled Substances  
14:34:06 20 Act, correct?

21 A. No.

22 Q. So do you recall giving a deposition in this case  
23 on June 15th, 2021, correct?

24 A. Correct.

14:34:27 25 Q. Okay. And let's look at that testimony.

1 Do you recall saying:

2 "Question: And so at least from a policies  
3 and procedures standpoint, if the VAWD is giving  
4 accreditation, it is concluding that their policies and  
14:34:40 5 procedures are compliant with the CSA, correct?

6 "Answer: Along with distribution lines,  
7 yes."

8 Correct?

9 A. Correct.

14:34:55 10 Can I also just clarify a point that you  
11 made earlier that I think is important that you made?

12 Q. I think that Mr. Lanier will ask you questions.

13 We have a limited period of time so let me  
14 get through these and then if we have additional time --

14:35:09 15 A. I don't represent the NABP as you said at the  
16 beginning, so.

17 Q. Well, you were the Executive Director of NABP for  
18 many years, correct?

19 A. Right. But at the beginning, you asked me if when  
14:35:20 20 I testified today I represented. I just want to make  
21 sure I was adhering to what you asked and I wanted to  
22 clarify.

23 Q. The jury heard just a little bit about Walmart's  
24 Health & Wellness department but you're familiar with a  
14:35:39 25 number of individuals that worked at Walmart's

1 Health & Wellness department, correct?

2 A. Correct.

3 Q. And, in fact, NABP has given those folks awards  
4 over the years for their work in pharmacy, correct?

14:35:51 5 A. Correct.

6 Q. And we touched on it briefly but I just want to  
7 make sure that we're clear.

8 You're aware Walmart pharmacists have  
9 always had the ability to refuse a prescription that they  
10 felt was inappropriate for any reason, right?

11 A. I wasn't aware of that until I saw the refuse to  
12 fill policy.

13 I don't know what occurred prior to that  
14 policy or whether that was something the pharmacists had  
15 the option to.

14:36:31 16 Q. Well, do you recall testifying at your deposition  
17 on June 16th, 2021, that you understood that Walmart  
18 pharmacists have always had the ability to refuse to fill  
19 any prescription that they felt was inappropriate for any  
14:36:44 20 reason?

21 MR. WEINBERGER: Objection, Your Honor.

22 If we're going to quote testimony, can we  
23 have the witness look at it?

24 THE COURT: I agree.

14:36:53 25 MS. FUMERTON: Okay. Let's pull it up,

1 please.

2 MR. WEINBERGER: Well, can we have the  
3 witness see it rather than publish it?

4 MR. LANIER: It doesn't matter.

14:37:01 5 MS. FUMERTON: I was trying to -- I was  
6 trying to address the objection of publishing it to the  
7 witness.

8 MR. LANIER: We're fine showing it to the  
9 world.

14:37:08 10 We just need page and line so we can follow  
11 along and see what's being said in the context, Your  
12 Honor.

13 THE COURT: I think that's fair.

14 MS. FUMERTON: Okay.

14:37:16 15 THE COURT: Give the page and the line.

16 MS. FUMERTON: It would be Page 513, Lines  
17 10 through 13 of the June 16th, 2021 deposition and we  
18 will pull it up on the screen.

19 MR. LANIER: What page?

14:37:29 20 THE COURT: Page 513.

21 MR. LANIER: Thank you, Judge.

22 THE COURT: 513.

23 BY MS. FUMERTON:

24 Q. Okay. So if we look at Page 513, Line 10, you were  
14:38:04 25 asked by me, actually:

1 "You understood that Walmart pharmacists  
2 have always had the ability to refuse to fill any  
3 prescription that they felt was inappropriate for any  
4 reason, correct?

14:38:15 5 "Answer: Yes."

6 Right?

7 A. Yes. Can you show the next part of the deposition,  
8 please, because that's relevant to the answer I just gave  
9 there.

14:38:24 10 Q. Okay.

11 A. So then you said --

12 Q. And that meant that Walmart pharmacists could  
13 exercise their professional judgment and not fill a  
14 single prescription from a prescriber they felt was  
14:38:33 15 problematic, correct?

16 A. Correct.

17 Q. You said, "That's my understanding, yes."

18 A. Under a pharmacist's professional judgment, they  
19 have that ability. If a company restricts that, I didn't  
14:38:42 20 know that.

21 So under professional judgment, every  
22 pharmacist in the world has the ability to not fill a  
23 prescription based on their professional judgment.

24 Q. Mr. Catizone, under your tenure, did NABP market  
14:39:02 25 and promote opioids to try and influence prescriber

1 behavior?

2 A. Not -- not at all.

3 I'm -- I don't know how to respond to that.

4 Definitely not.

14:39:21 5 Q. And under your tenure, did NABP receive sponsorship  
6 grants from Purdue Pharma?

7 A. No.

8 Q. Did Purdue Pharma fund continuing education  
9 programs put on by NABP?

14:39:35 10 A. I can't recall if they did, but Purdue Pharma  
11 provided a million dollars to NABP and NABP turned around  
12 and gave that money to the states, every dime of it, so  
13 that the states could establish their PDMP programs as  
14 part of the payback that we felt Purdue owed the states  
14:39:55 15 and patients that were affected by the opioid problem.

16 Q. So but you signed contracts with Purdue Pharma to  
17 receive money for -- to promote continuing education  
18 programs, correct?

19 A. We accepted money from Purdue Pharma, Walmart,  
14:40:11 20 Walgreen's, for educational programs of grants no larger  
21 than \$5,000, and those programs are regulated by the  
22 accreditation council and pharmacy education and we have  
23 to follow those guidelines.

24 And anyone who sponsored a program had no  
14:40:25 25 control over the topic or over the subject or over the

1 people who spoke at those sessions.

2 Q. So and that's not my question.

3 My question is by accepting the \$5,000 on  
4 contracts that you signed, right?

14:40:39 5 A. Correct.

6 Q. You were promoting opioids, right?

7 A. We -- I at NABP never promoted opioids, ma'am.

8 Q. And you would agree that entering into a contract  
9 with Purdue to put on pharmacist education would not be  
14:40:59 10 promoting opioids, correct?

11 A. Agreed, because the programs that Purdue sponsored  
12 did not deal with opioids.

13 They dealt with other subjects.

14 Q. And so if somebody were to suggest that because  
14:41:39 15 NABP received grants for programs from Purdue, NABP was  
16 colluding with Purdue -- I'm sorry, let me rephrase.

17 So if somebody were to suggest that because  
18 NABP received grants for programs from Purdue, that NABP  
19 was colluding with Purdue and responsible for the opioid  
14:41:54 20 crisis, that would be inaccurate, right?

21 A. Not only it would be inaccurate, I would take that  
22 as a person and professional insult to myself and NABP.

23 MS. FUMERTON: Thank you.

24 I have no further questions and will pass  
14:42:06 25 it on to the next defendant.

1 Thank you for your time, Mr. Catizone.

2 THE WITNESS: Thank you.

3 MR. SWANSON: Your Honor, excuse me, I'm  
4 happy to begin.

14:42:19 5 I'm mindful of the time, in that I'm not  
6 going to get through my exam and certainly my colleagues  
7 on the defense side are not going to --

8 THE COURT: Why don't you take about 15  
9 minutes and when it's a good time to stop, we'll stop.

14:42:34 10 MR. SWANSON: Happy to do it, Your Honor, I  
11 was going to say you give me the time out to --

12 THE COURT: I'm not going to cut you off.

13 Go for about 15 minutes and if I see it  
14 looks like you're moving to another subject, we'll stop.

14:42:48 15 MR. SWANSON: Okay. Thank you.

16 MR. STOFFELMAYR: I'll give you the time  
17 out over here.

18 MR. SWANSON: Mr. Pitts, do I have it on  
19 the computer? Thank you.

14:43:19 20 Your Honor, may I proceed?

21 THE COURT: Yes. Yes, Mr. Swanson.

22 MR. SWANSON: Thank you.

23 CROSS-EXAMINATION OF CARMEN CATIZONE

24 BY MR. SWANSON:

14:43:26 25 Q. Mr. Catizone, good afternoon. Members of the jury,

1 good afternoon.

2 We're on the final stretch for the week and  
3 so I hope you'll bear with me for a few questions and we  
4 can reconvene on Tuesday morning. Okay?

14:43:36 5 A. Yes, sir.

6 Q. Now, Mr. Catizone, you may not recall or you may  
7 not have noticed, but you and I have actually met a few  
8 times before over a Zoom deposition.

9 Do you recognize my face? I recognize  
14:43:49 10 yours.

11 A. Yes, sir.

12 Q. I may have had some -- some bad COVID facial hair  
13 at the time but I smartened up or my wife made me.

14 What I want to do with the last few minutes  
14:44:02 15 today is continue with our discussion of red flags you  
16 were having with Ms. Fumerton, but I want to take it to a  
17 bit more general level.

18 And, sir, to start that discussion, I  
19 wanted to touch on something that you talked about  
14:44:18 20 yesterday a couple times with Mr. Lanier.

21 You sort of touched on it in passing, and  
22 that is the stakeholders red flag document that you put  
23 together with some stakeholders when you were over at  
24 NABP.

14:44:35 25 Do you recall generally that topic coming

1 up yesterday?

2 A. Yes, sir.

3 Q. And you and I have talked about that a bit in your  
4 depositions, too, do you recall that?

14:44:43 5 A. Yes, sir.

6 Q. And the stakeholders document, I think you told me,  
7 was an example of the NABP working together with  
8 pharmaceutical -- or pharmacy chains and other interested  
9 parties to put out a document that you believe brought  
10 value, right?

14:45:03

11 A. Yes, sir.

12 Q. And if, if my notes were right, and you can correct  
13 me if I'm wrong, but I believe that was in the 2013, 2014  
14 time frame.

14:45:13 15 Is that right?

16 A. I believe so, sir, yes.

17 Q. Okay. So just to reset the stage for everyone's  
18 benefit here, at that time, 2013, 2014, there were  
19 problems that were arising between prescribers and  
20 pharmacists regarding red flags and the pharmacists'  
21 corresponding responsibility, right?

14:45:31

22 A. Yes, sir.

23 Q. All right. And what I wanted to know is just talk  
24 a bit more specifically about the genesis of that  
25 project.

14:45:47

1 As I understand it, I think you've  
2 mentioned this yesterday, you at NABP were approached  
3 jointly by Walgreen's and the American Medical  
4 Association to convene a group of stakeholders, right?

14:46:06 5 A. Yes, sir.

6 Q. And can you just remind us all or tell us for the  
7 first time who the AMA is?

8 A. That's the American Medical Association.

9 It's a professional association for  
10 individual practicing doctors.

11 Q. And do you have any sense how big, how many members  
12 are in the AMA?

13 A. From just what I read, I think there are over two  
14 million doctors.

14:46:26 15 I know for certain there are two million  
16 doctors licensed in the United States based upon my work  
17 with the Federation of State Medical Boards, but the AMA  
18 members are significantly less, I think somewhere in the  
19 range of maybe 39,000 doctors are actually members of the  
14:46:43 20 AMA.

21 And the AMA is based in downtown Chicago.

22 Q. And when you were at NABP, did you frequently work  
23 with the AMA?

24 A. Yes, sir.

14:46:51 25 Q. Okay. And so if I understood it, what would have

1 happened in that time frame, the AMA had passed a  
2 resolution that pharmacists should simply fill  
3 prescriptions from doctors and that pharmacists shouldn't  
4 be providing a check or second-guessing the prescribers'  
14:47:13 5 decisions.

6 Is that right?

7 A. Yes, sir.

8 Q. They said at AMA that prescribers, or pharmacists,  
9 excuse me, were interfering with the practice of medicine  
14:47:24 10 by conducting prospective Drug Utilization Review, right?

11 A. They -- my recollection -- and I wasn't there --  
12 they made the statement that pharmacists were interfering  
13 by requesting MRIs and other diagnostic tests.

14 I'm not sure of the specific language, but  
14:47:43 15 I agree with what you said, sir.

16 Q. Okay. And so what was happening is that  
17 pharmacists were getting prescriptions from patients and  
18 I take it these were prescriptions for opioid  
19 medications, right?

14:47:54 20 A. Yes, sir. For controlled substances, opioids as  
21 well.

22 Q. Okay. But was opioids sort of the focus of this?

23 A. Yes.

24 Q. And what was happening is that these pharmacists in  
14:48:03 25 exercising their corresponding responsibility were

1 calling up physicians and were asking for further  
2 information so that they could make a decision whether to  
3 dispense, right?

4 A. Yes, sir.

14:48:13 5 Q. And this was Walgreen's and other chain pharmacies  
6 who were coming to you with this information, right?

7 A. Yes, sir.

8 Q. And Walgreen's had a problem with this because  
9 they're trying to fulfill their corresponding  
14:48:29 10 responsibility, and they're being told that they may need  
11 to contact a physician to check up on the prescription,  
12 and the physicians were saying stop calling me, right?

13 A. Yes, sir.

14 Q. Just dispense what we prescribe and don't ask  
14:48:42 15 questions, right?

16 A. Yes, sir.

17 Q. And Walgreen's wasn't willing to do that, were  
18 they?

19 A. For the -- yes, in the situations that occurred,  
14:48:50 20 yes.

21 Q. In the situation I'm describing, that's how it  
22 arose, right?

23 A. Correct.

24 Q. Now -- excuse me, he can't hear.

14:49:04 25 You weren't here for openings, I don't

1 believe, and have you seen the openings?

2 A. No, sir.

3 Q. Okay. In the openings, Mr. Lanier made a reference  
4 to pharmacists at the chain pharmacies acting like  
14:49:15 5 gumball machines when it came to dispensing opioid  
6 medications.

7 MR. LANIER: Objection, Your Honor. I did  
8 not. I said the exact opposite, that they should not be  
9 treated like gumball machines.

14:49:30 10 THE COURT: All right. Well, remember,  
11 ladies and gentlemen, I said that the opening statements  
12 are not evidence, nor are questions.

13 So the jury is to essentially disregard  
14 that colloquy because it's inconsequential.

14:49:46 15 BY MR. SWANSON:

16 Q. Let me ask you this.

17 What was happening at Walgreen's at the  
18 time when they approached you at the AMA, was not  
19 Walgreen's pharmacists acting like gumball machines, was  
14:49:57 20 it, sir?

21 A. No, sir.

22 Q. And the folks at Walgreen's and at the other chain  
23 pharmacies wanted guidance from the NABP as to what was  
24 appropriate in their interactions with physicians when  
14:50:11 25 the pharmacists were trying to fulfill their

1 corresponding responsibility, right?

2 A. The original intent, sir, was to open the lines of  
3 communication and resolve the conflict that was occurring  
4 between the doctors and the pharmacists and reach a  
14:50:26 5 balance between both responsibilities, sir.

6 Q. Okay. So you wanted to bring together doctors, you  
7 wanted to bring together pharmacists, and other entities,  
8 to have a discussion about how pharmacists could fulfill  
9 their corresponding responsibilities without interfering  
14:50:41 10 with the physicians' practice of medicine, right?

11 A. Yes, sir.

12 Q. Okay. And so a bunch of folks came together,  
13 Walgreen's participated in that, right?

14 A. Me -- I don't have the list, but, yes, sir, I'll  
14:50:55 15 try and remember them all.

16 Q. Well, let me try and then I can show you the list  
17 in just a minute, but do you recall -- well, obviously  
18 Walgreen's participated, right?

19 A. Correct.

14:51:03 20 Q. And do you recall if CVS participated?

21 A. Yes, they did.

22 Q. And obviously the AMA?

23 A. Yes, they did.

24 Q. And do you recall if the NACDS participated?

14:51:15 25 A. I believe they did.

1 Q. And who is the NACDS?

2 A. The NACDS is the National Association of Chain Drug  
3 Stores. They're the trade association for the chains  
4 that would lobby for legislation and advocate for the  
14:51:29 5 chains in the states and in Federal Government.

6 Q. Okay. And what happens is everybody got together  
7 and there were meetings and they lasted for a couple of  
8 years at least, right?

9 A. I think about a year-and-a-half, sir.

14:51:44 10 But the other participants that were  
11 important to mention is that the DEA also attended those  
12 meetings, as well as Rite Aid, as well as all the major  
13 distributors, Cardinal Health was there, and also some of  
14 the manufacturers were there, and I can't recall, but  
14:52:01 15 it's important that those participants were noted, too.

16 Q. Okay. Good.

17 So the DEA could come in and they could  
18 discuss with the pharmacies what they thought the  
19 pharmacists should be doing in their interactions with  
14:52:13 20 prescribers, right?

21 A. Exactly, sir.

22 Q. Got it. Okay.

23 And what happened is over the course of  
24 these meetings, these -- all of these entities got  
14:52:24 25 together and they generated a document, right?

1 A. I don't want to characterize them as enemies in  
2 case the testimony gets out, but, yes, those  
3 stakeholders --

4 Q. I said entities.

14:52:35 5 (Laughter.)

6 A. I'm sorry, I thought you said enemies.

7 Q. We are at different spots.

8 A. I was getting nervous there for a second.

9 Q. I think we like each other.

14:52:44 10 All right. The entities got together and  
11 met several times and they worked on a document that then  
12 was put out by your organization, the NABP, right?

13 A. Yes, sir.

14 Q. And the stakeholders document that they put out,  
14:52:57 15 that was a document that you supported as the CEO in its  
16 final form, right?

17 A. Yes, sir.

18 Q. Okay.

19 MR. SWANSON: Your Honor, I can get into  
14:53:09 20 the document.

21 I'm afraid that I'm going to get cut off.

22 THE COURT: All right. Well, then, a good  
23 time to stop.

24 All right. Ladies and gentlemen, we're  
14:53:19 25 breaking early because of the holiday weekend. So I want

1 to remind you of a couple things.

2 No Court on Monday. It's Columbus Day, so  
3 enjoy a good holiday.

4 On Tuesday, we're going to start at 9:00.

14:53:35 5 We're going to take a slightly later lunch, around 1:00  
6 because I'm going to conduct a naturalization ceremony up  
7 the street. So we'll be back essentially on our usual  
8 schedule 9:00 to 5:30 on Tuesday.

9 It's important that you remember all of the  
14:53:52 10 admonitions because you're going to be off for three  
11 days.

12 If you encounter anything about this case  
13 in the media, print, electronic, whatever, just turn the  
14 channel, page, ignore it. Do not discuss this case with  
14:54:06 15 anyone.

16 Tell your family members, friends,  
17 colleagues, whatever, you're sitting on a jury and this  
18 Judge has ordered me not to talk about it until it's  
19 over.

14:54:16 20 Just relax, have a good few days, and we'll  
21 see you all on Monday -- Tuesday, Tuesday, 9:00 a.m.

22 Oh, and that was Mr. Swanson for  
23 Walgreen's. He didn't introduce himself or I forgot to.

24 MR. SWANSON: I apologize, Your Honor.  
14:54:37 25 That's rude. My apologies.

1 (Jury out.)

2 THE COURT: Have a good weekend, and I'll  
3 see everyone Tuesday.

4 My basic tally was 14.57 hours for the  
14:55:20 5 plaintiffs and 6.25 for the defendants so --

6 MR. LANIER: Thank you, Judge.

7 THE COURT: -- see you all on Tuesday.

8 (Proceedings concluded at 2:55 p.m.)

9 - - - -

10 C E R T I F I C A T E

11 I certify that the foregoing is a correct  
12 transcript from the record of proceedings in the  
13 above-entitled matter.

14

15 /s/Susan Trischan

16 /S/ Susan Trischan, Official Court Reporter  
Certified Realtime Reporter

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